

# EXHIBIT 1

THE HONORABLE THOMAS S. ZILLY

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STRAITSHOT RC, LLC, a Delaware limited liability company,

Plaintiff,

v.

TELEKENEX, INC., a Delaware corporation; MARK PRUDELL and JOY PRUDELL, husband and wife and the marital community composed thereof; MARK RADFORD and NIKKI RADFORD, husband and wife and the marital community composed thereof, JOSHUA SUMMERS and JULIA SUMMERS, husband and wife and the marital community composed thereof; ANTHONY ZABIT and JANE DOE ZABIT, husband and wife and the marital community composed thereof; BRANDON CHANEY and JANE DOE CHANEY, husband and wife and the marital community composed thereof, MAMMOTH NETWORKS, LLC, and BRIAN WORTHEN and JANE DOE WORTHEN, husband and wife and the marital community composed thereof; IXC HOLDINGS, INC., a Delaware corporation,

Defendants.

TELEKENEX, INC., a Delaware Corporation,

Third-Party Plaintiff,

v.

STRAITSHOT RC, LLC, a Delaware limited liability company; STEPHEN PERRY and JANE DOE PERRY, and the marital community composed thereof; and ANDREW GOLD and JANE DOE GOLD, and the marital community composed thereof,

Third-Party Defendants.

CASE NO. C10-268 TSZ

**FIFTH AMENDED COMPLAINT FOR DAMAGES**

1 MAMMOTH NETWORKS, LLC, a Wyoming  
2 limited liability company,

3 Third-Party Plaintiff,

4 v.

5 CLARITAGE STRATEGY FUND, L.P., a  
6 Cayman Islands limited partnership, and  
7 STRAITSHOT RC, LLC, a Delaware limited  
liability company,

8 Third-Party Defendants.

9 **I. INTRODUCTION**

10 1. This case arises out of a series of unlawful schemes agreed to and perpetrated by  
11 Defendants in order to steal the trade secrets and confidential customer information of Straitshot,  
12 to cover-up this theft through the destruction of evidence, and to continuously use the stolen trade  
13 secrets and confidential customer information in order to abscond with, and ultimately destroy, the  
business of Straitshot for Defendants' benefit.

14 **II. PARTIES**

15 2. Plaintiff Straitshot. Straitshot Communications, Inc. ("Straitshot") was a  
16 corporation organized under the laws of the State of Washington and authorized to conduct  
17 business in the State of Washington. Its principal place of business was in Bellevue, Washington.

18 3. Defendant Telekenex. Telekenex, Inc. ("Telekenex") is a corporation organized  
19 under the laws of the State of Delaware. Its principal place of business is in San Francisco,  
20 California. Telekenex maintains an office in Seattle, Washington and is registered to do business  
21 in the State of Washington.

22 4. Defendants Prudell. Mark Prudell ("Prudell") and Joy Prudell are residents of  
23 Renton, Washington. Mark and Joy Prudell are and were at all relevant times husband and wife,  
24 constituting a marital community under the laws of the State of Washington. All acts performed  
25 by Prudell were for himself individually and on behalf of the marital community.

1           5.       Defendants Radford. Mark Radford (“Radford”) and Nikki Radford are residents  
2 of Vancouver, Washington. Mark and Nikki Radford are and were at all relevant times husband  
3 and wife, constituting a marital community under the laws of the State of Washington. All acts  
4 performed by Radford were for himself individually and on behalf of the marital community.

5           6.       Defendants Summers. Joshua Summers (“Summers”) and Julia Summers are  
6 residents of Issaquah, Washington. Joshua and Julia Summers are and were at all relevant times  
7 husband and wife, constituting a marital community under the laws of the State of Washington.  
8 All acts performed by Summers were for himself individually and on behalf of the marital  
9 community.

10          7.       Defendants Zabit. Anthony Zabit (“Zabit”) and Jane Doe Zabit are residents of the  
11 State of California. Anthony and Jane Doe Zabit, on information and belief, are and were at all  
12 relevant times husband and wife, constituting a marital community. All acts performed by Zabit  
13 were for himself individually and on behalf of the marital community. Zabit is the President of  
14 Telekenex and IXC Holdings, Inc. (collectively, the “Telekenex Companies”).

15          8.       Defendants Chaney. Brandon Chaney (“Chaney”) and Jane Doe Chaney are  
16 residents of the State of California. Brandon and Jane Doe Chaney, on information and belief, are  
17 and were at all relevant times husband and wife, constituting a marital community. All acts  
18 performed by Chaney were for himself individually and on behalf of the marital community.  
19 Chaney is the Chief Executive Officer of the Telekenex Companies.

20          9.       Defendant Mammoth. Mammoth Networks, LLC (“Mammoth”) is a Wyoming  
21 limited liability company.

22          10.       Defendants Worthen. Brian Worthen (“Worthen”) and Jane Doe Worthen are  
23 residents of the State of Wyoming. Brian and Jane Doe Worthen, on information and belief, are  
24 and were at all relevant times husband and wife, constituting a marital community. All acts  
25 performed by Worthen were for himself individually and on behalf of the marital community.  
26 Worthen is the Chief Executive Officer of Mammoth.

1 11. Defendant IXC Holdings, Inc. IXC Holdings, Inc. (“IXC Holdings”) is a  
2 corporation organized under the laws of the State of Delaware. Its principal place of business is in  
3 San Francisco, California. IXC Holdings maintains an office in Seattle, Washington and is  
4 registered to do business in the State of Washington.

5 **III. JURISDICTION AND VENUE**

6 12. Subject Matter Jurisdiction. Telekenex, Prudell, Radford and Summers removed  
7 this lawsuit on February 12, 2010 on the basis of the RICO Act and pendent and/or supplemental  
8 jurisdiction of the state law causes of action.

9 13. Venue. Venue in this removed case is proper under 28 U.S.C. 1446(a). Venue also  
10 is proper in this District pursuant to 28 U.S.C. 1391(b).

11 **IV. FACTS**

12 14. Straitshot’s Business. Straitshot was a managed network service provider.  
13 Straitshot enabled enterprises to share mission-critical data, voice and hosted applications between  
14 multiple locations. Most of its customers were small and medium-sized companies and all had  
15 entered into service contracts with Straitshot that included a committed term, generally between  
16 18-36 months or longer.

17 15. Mammoth Contract. Mammoth had been providing services to Straitshot since at  
18 least early 2007. In January 2008, as part of a strategic partnership between Mammoth and  
19 Straitshot to purchase a significant amount of network capacity from Qwest Communications,  
20 Mammoth entered into a contract with Straitshot to supply circuits to Straitshot (the “Mammoth  
21 Contract”). Straitshot, in turn, used those circuits to build managed networks for Straitshot’s  
22 customers.

23 16. Mammoth Confidentiality Clause. Paragraph 10 of the Mammoth Contract  
24 provides as follows:

25 Neither Party shall disclose to any third party during the term of this  
26 Agreement and for one (1) year following the expiration or  
termination hereof, (a) any of the terms of this Agreement, including  
pricing; (b) the existence, negotiations, or result of any arbitrations

1 or settlements hereto; or (c) any other confidential or proprietary  
2 information of the other Party disclosed during the term of this  
3 Agreement.

4 17. Telekenex's Business. According to its website, www.telekenex.com, Telekenex  
5 "is a business-grade IP service provider with a robust private international IP network" serving  
6 "enterprise voice and data customers." Telekenex and Straitshot were competitors.

7 18. Telekenex Approaches Straitshot. Beginning in October 2008 and continuing  
8 through February 2009, Telekenex made overtures to Straitshot suggesting the companies consider  
9 combining their resources. Although Straitshot supplied Telekenex with substantial information  
10 about Straitshot's business, Telekenex refused to do the same.

11 19. Prudell Employed by Straitshot. Prudell signed an employment contract with  
12 Straitshot effective April 18, 2007 (the "Prudell Employment Contract"). Prudell served as  
13 Straitshot's Regional Sales Director until January 16, 2009. He was responsible for generating  
14 leads, developing opportunities, closing new sales and supporting existing customers as they  
15 developed new requirements. He retained responsibility for customer relationship management,  
16 including serving as the point of contact for customers who were experiencing difficulties with  
17 other functional areas of the company. Since early 2008, all Straitshot opportunities – whether  
18 generated by him, Radford, a channel or wholesale partner, existing customers or any other  
19 manner – were managed from a sales perspective by Prudell and Radford. Prudell had complete  
20 access to all confidential commercial, technical and financial information regarding Straitshot  
21 customers.

22 20. Prudell's Non-Competition and Confidentiality Obligation. Paragraph 7 of the  
23 Prudell Employment Contract provides:

24 In the event you do not continue employment with the Company for  
25 any reason, you agree that, except to or for the benefit of the  
26 Company, its subsidiaries and affiliates, you will not use or  
communicate or divulge to any person, firm or corporation, either  
directly or indirectly, any confidential or proprietary information  
relating to the business, customers, suppliers, shareholders or other  
persons or entities affiliated with the Company, its parent,

1 subsidiaries and their affiliates. Without limiting the foregoing, all  
2 information concerning procedures and strategy of the Company, its  
3 subsidiaries, parent and their affiliates shall be deemed confidential  
4 and proprietary information.

5 (Emphasis added.)

6 21. Prudell's Non-Solicitation Obligation. Paragraph 8 of the Prudell Employment  
7 Contract provides:

8 Non-Solicitation. For a period of twelve (12) months immediately  
9 following the termination of your relationship with the Company for  
10 any or no reason, whether with or without cause, you shall not either  
11 directly or indirectly solicit, induce, recruit or encourage any of the  
12 Company's employees to leave their employment, or take away such  
13 employees, or attempt to solicit, induce, recruit, encourage or take  
14 away employees of the Company, either for yourself or for any other  
15 person or entity.

16 (Emphasis added.)

17 22. Prudell's Obligation to Return Straitshot Documents. Paragraph 10 of the Prudell  
18 Employment Contract provides:

19 Technical Records. Immediately upon the Company's request and  
20 promptly upon termination of this Agreement, you shall deliver to  
21 the Company all memoranda, notes, records, reports, photographs,  
22 drawings, plans, papers, or other documents made or compiled by  
23 you in the process of carrying out, or made available to you in  
24 relation to your employment with the Company under this  
25 Agreement, and any copies or abstracts thereof, whether or not of a  
26 secret or confidential nature, and all of such memoranda and other  
documents shall, during and after the termination of this Agreement,  
be the exclusive property of the Company.

23 23. Radford Employment by Straitshot. Radford signed an employment contract with  
24 Straitshot effective June 1, 2007 (the "Radford Employment Contract"). Radford served as  
25 Straitshot's Regional Sales Director until January 16, 2009. He was responsible for generating  
26 leads, developing opportunities, closing new sales and supporting existing customers as they  
developed new requirements. He retained responsibility for customer relationship management,  
including serving as the point of contact for customers who were experiencing difficulties with  
other functional areas of the company. Since early 2008, all Straitshot opportunities – whether

1 generated by him, Prudell, a channel or wholesale partner, existing customers or any other manner  
2 – were managed from a sales perspective by Prudell and Radford. Radford had complete access to  
3 all confidential commercial, technical and financial information regarding Straitshot customers.

4 24. Radford’s Non-Competition and Confidentiality Obligation. Paragraph 6 of the  
5 Radford Employment Contract provides:

6 In the event you do not continue employment with the Company for  
7 any reason, you agree that, except to or for the benefit of the  
8 Company, its subsidiaries and affiliates, you will not use or  
9 communicate or divulge to any person, firm or corporation, either  
10 directly or indirectly, any confidential or proprietary information  
11 relating to the business, customers, suppliers, shareholders or other  
12 persons or entities affiliated with the Company, its parent,  
13 subsidiaries and their affiliates. Without limiting the foregoing, all  
14 information concerning procedures and strategy of the Company, its  
15 subsidiaries, parent and their affiliates shall be deemed confidential  
16 and proprietary information.

17 (Emphasis added.)

18 25. Radford’s Non-Solicitation Obligation. Paragraph 7 of the Radford Employment  
19 Contract provides:

20 Non-Solicitation. For a period of twelve (12) months immediately  
21 following the termination of your relationship with the Company for  
22 any or no reason, whether with or without cause, you shall not either  
23 directly or indirectly solicit, induce, recruit or encourage any of the  
24 Company’s employees to leave their employment, or take away such  
25 employees, or attempt to solicit, induce, recruit, encourage or take  
26 away employees of the Company, either for yourself or for any other  
person or entity.

(Emphasis added.)

27 26. Radford’s Obligation to Return Straitshot Documents. Paragraph 9 the Radford  
28 Employment Contract provides:

29 Technical Records. Immediately upon the Company’s request and  
30 promptly upon termination of this Agreement, you shall deliver to  
31 the Company all memoranda, notes, records, reports, photographs,  
32 drawings, plans, papers, or other documents made or compiled by  
33 you in the process of carrying out, or made available to you in  
34 relation to your employment with the Company under this  
35 Agreement, and any copies or abstracts thereof, whether or not of a  
36 secret or confidential nature, and all of such memoranda and other

1 documents shall, during and after the termination of this Agreement,  
2 be the exclusive property of the Company.

3 OCTOBER 2008

4 27. October 10, 2008. On October 10, 2008, while he was employed by Straitshot,  
5 Prudell, in Washington, e-mailed Zabit, in California: "I'm open for a call at any time."

6 28. October 21, 2008. On October 21, 2008, while he was employed by Straitshot,  
7 Prudell, in Washington, e-mailed Chaney, in California, confidential Straitshot information  
8 regarding an opportunity to sell services to Snoqualmie Casino. Straitshot had expended  
9 significant resources in the preceding months developing Snoqualmie Casino as a customer and  
10 Prudell and Radford had identified it in their Straitshot sales pipeline reports for months. Despite  
11 this, Prudell and Radford perpetrated a scheme to send Telekenex confidential information  
12 regarding this sales opportunity that rightfully belonged to Straitshot.

13 29. October 27, 2008. On October 27, 2008, a Telekenex employee, in California, e-  
14 mailed Snoqualmie Casino, in Washington, to solicit business based on the referral from Prudell.

15 NOVEMBER 2008

16 30. Restructuring of Straitshot's Business. In November 2008, Straitshot determined  
17 that it needed to restructure its business with an infusion of new capital.

18 31. Request for Deferral by Mammoth. To accomplish this restructuring, Straitshot  
19 turned to Mammoth, its second largest circuit vendor, and requested that Mammoth defer  
20 Straitshot's payment of \$120,000 of service fees that would come due in November and December  
21 2008 until 2010. This would give Straitshot the flexibility it needed to successfully complete the  
22 restructuring.

23 32. Mammoth's Agreement to Defer Payment. In November 2008, Worthen traveled  
24 to New York to meet with Straitshot's CEO Andrew Gold and a principal investor supporting the  
25 planned restructuring. Worthen agreed to Straitshot's request to defer payment of \$120,000 for  
26 November and December 2008 service fees until 2010 and to pay subsequent Mammoth invoices  
when they came due (the "Deferral Agreement").

1           33.     Straitshot Proceeds With Planned Restructure. On the basis of Mammoth's  
2 Deferral Agreement, Straitshot determined that it could and would proceed with its restructuring  
3 plan.

4           34.     November 11, 2008. On November 11, 2008, while he was employed by  
5 Straitshot, Prudell, in Washington, e-mailed Chaney, in California, confidential Straitshot  
6 information regarding an opportunity to sell services to Shari's Restaurants. Straitshot had  
7 expended significant resources in the preceding months developing Shari's Restaurants as a  
8 customer and Prudell and Radford had identified it in their Straitshot sales pipeline reports for  
9 months. Despite this, Prudell and Radford perpetrated a scheme to send Telekenex confidential  
10 information regarding this sales opportunity that rightfully belonged to Straitshot.

11           35.     November 11, 2008. On November 11, 2008, while he was employed by  
12 Straitshot, Prudell, in Washington, e-mailed Chaney, in California, confidential Straitshot  
13 information regarding an opportunity to sell services to Straitshot customer Buffalo Exchange.  
14 Prudell attached a confidential Straitshot spreadsheet containing the Straitshot circuit addresses,  
15 customer phone numbers at each address, circuit capacities, circuit speeds, underlying carriers, and  
16 Straitshot's pricing, along with a copy of Straitshot's sales order for Buffalo Exchange. Straitshot  
17 had expended significant resources in the preceding months developing Buffalo Exchange as a  
18 customer and Prudell and Radford had identified it in their Straitshot sales pipeline reports for  
19 months. Despite this, Prudell and Radford perpetrated a scheme to send Telekenex confidential  
20 information regarding this sales opportunity that rightfully belonged to Straitshot.

21           36.     November 15-16, 2008. Prudell and Radford, while employed by Straitshot,  
22 traveled from Washington to California and back on November 15-16, 2008 to meet with Chaney  
23 at Telekenex's offices in San Francisco and discussed combining their efforts to solicit Straitshot  
24 customers to abandon their Straitshot contracts and move to Telekenex.

25           37.     November 19, 2008. On November 19, 2008, while Prudell and Radford were  
26 employed by Straitshot, Chaney, in California, e-mailed Prudell and Radford, in Washington, that

1 Prudell and Radford “have a very strong funnel and prospects” and expressing Chaney’s interest to  
2 work out a deal with Prudell and Radford.

3 38. November 19, 2008. On November 19, 2008, while he was employed by  
4 Straitshot, Prudell, in Washington, e-mailed Chaney, in California, confidential Straitshot  
5 information regarding Straitshot’s largest customer Evergreen Healthcare (“Evergreen”) and  
6 informed Telekenex that Evergreen Healthcare “will follow us if we are at a company that can  
7 deliver.” Prudell attached a confidential Straitshot spreadsheet containing the addresses of each of  
8 the Evergreen sites.

9 39. Inviting Mammoth’s Participation. In November 2008, Prudell, in Washington,  
10 communicated with Worthen, in Wyoming, and asked Worthen if Mammoth would provide  
11 service to Straitshot customers that Prudell, Radford and Telekenex could convince to move to  
12 Telekenex’s network. At this time Mammoth was under contract with Straitshot to provide  
13 circuits to these Straitshot customers. Prudell gave Worthen Chaney’s phone number and asked  
14 Worthen to call Chaney to discuss Mammoth’s role in moving Straitshot customers to Telekenex.

15 40. November 22, 2008. On or about November 22, 2008, while Mammoth was under  
16 contract with Straitshot, Worthen, in Wyoming, called Chaney, in California, and agreed to a  
17 scheme to move Straitshot’s customers, without Straitshot’s consent, to Telekenex’s network.  
18 Through January 12, 2009 and while Mammoth was under contract with Straitshot, Worthen, in  
19 Wyoming, had at least 11 other telephone conversations with Telekenex employees in California  
20 in furtherance of this scheme. Worthen understood that Mammoth had the power to make a  
21 success or failure of the plan to induce Straitshot’s customers to move to Telekenex’s network  
22 without Straitshot’s consent because a substantial percentage of Straitshot’s circuits, and most of  
23 those serving Straitshot’s largest and most profitable customers, ran through Mammoth’s  
24 equipment and Mammoth had, from a technical standpoint, control over where Straitshot’s  
25 customer circuits were directed.

1           41.    November 24, 2008. On November 24, 2008, while he was employed by  
2 Straitshot, Prudell, in Washington, e-mailed Chaney, in California, and advised him that Straitshot  
3 had many circuits being supplied by Mammoth and that Worthen “wants the business to follow us  
4 if we were to move to your company. That is why he is looking to speak with you. The revenues  
5 should give you the ability to afford us and bring us on board. Thanks and more to come.”

6           42.    November 25, 2008. On November 25, 2008, while he was employed by  
7 Straitshot, Prudell, in Washington, e-mailed Chaney, in California, confidential Straitshot  
8 information regarding an opportunity to sell services to Stokes Auction Group. This sales  
9 opportunity rightfully belonged to Straitshot.

10          43.    November 25, 2008. On or about November 25, 2008, Telekenex employee Karen  
11 Salazar (“Salazar”), in California, spoke by telephone with Prudell, in Washington, regarding  
12 Prudell and Radford signing an agreement with Telekenex to forward sales opportunities –  
13 opportunities that Prudell and Radford generated while employed by Straitshot and using  
14 Straitshot’s confidential information – to Telekenex in exchange for commissions. That day,  
15 Salazar, in California, e-mailed to Prudell, in Washington, the Telekenex agent agreement and  
16 advised Prudell that she had contacted Worthen, in Wyoming, while Mammoth was under contract  
17 with Straitshot, and discussed moving Straitshot’s existing customers to Telekenex’s network  
18 without Straitshot’s consent.

19          44.    November 25, 2008. On or about November 25, 2008, while he was employed by  
20 Straitshot, Prudell, in Washington, spoke by telephone with Telekenex employee Larry Bani  
21 (“Bani”), in California, regarding Telekenex supplying quotes for the Straitshot opportunities  
22 Prudell had funneled to Telekenex. That day, Prudell, in Washington, e-mailed to Salazar, in  
23 California, confidential Straitshot information regarding an opportunity to sell services to Joie de  
24 Vivre. Straitshot had expended significant resources in the preceding months developing Joie de  
25 Vivre as a customer and Prudell and Radford had identified it in their Straitshot sales pipeline

26

1 reports for months. Despite this, Prudell and Radford sent to Telekenex confidential information  
2 regarding this sales opportunity that rightfully belonged to Straitshot.

3 45. November 25, 2008. On November 25, 2008, while he was employed by  
4 Straitshot, Prudell, in Washington, e-mailed to Joie de Vivre, in California, recommending that  
5 Prudell schedule a telephone call or webinar with Joie de Vivre and Telekenex to discuss  
6 Telekenex's capability to service Joie de Vivre.

7 46. November 25, 2008. On November 25, 2008, Telekenex employee Joel Ciniero  
8 ("Ciniero"), in California, e-mailed to Prudell, in Washington, Telekenex's quote for Stokes  
9 Auction Group and advised that he "will finish the other items that we discussed and send them  
10 along."

11 47. November 26, 2008. On November 26, 2008, Ciniero, in California, e-mailed to  
12 Prudell, in Washington, Telekenex's quote for Shari's Restaurants.

13 48. Prudell's e-mail address. In November 2008, while he was a Straitshot employee,  
14 Prudell, in Washington, informed Worthen, in Wyoming, that Worthen should stop using Prudell's  
15 Straitshot e-mail address and use, instead, Prudell's personal e-mail address to discuss moving  
16 Straitshot's customers to Telekenex's network. The purpose of this request was to prevent  
17 Straitshot from discovering Prudell's theft of Straitshot's trade secrets and confidential customer  
18 information. Worthen, while Mammoth was under contract with Straitshot, agreed to Prudell's  
19 request.

20 49. November 26, 2008. On November 26, 2008, while he was employed by  
21 Straitshot, Radford, in Washington, e-mailed to Worthen, in Wyoming, while Mammoth was  
22 under contract with Straitshot, a request that Mammoth price circuits for Radford and Prudell to  
23 quote directly to customers, not on behalf of Straitshot. That day, Worthen, in Wyoming, e-  
24 mailed to Radford and Prudell, in Washington, using non-Straitshot email addresses, with the  
25 requested quotes "so they could be moved to any router at the core at a later date (like  
26 Telekenex)."

DECEMBER 2008

1  
2 50. December Payment. Pursuant to the Deferral Agreement, in December 2008  
3 Straitshot paid the outstanding Mammoth invoices for services in September and October 2008  
4 and \$4,050.92 of the December Mammoth invoice, leaving a deferred balance of \$120,000 from  
5 the November and December 2008 invoices.

6 51. December 1, 2008. On December 1, 2008, while he was employed by Straitshot,  
7 Prudell, in Washington, left a voicemail message for Ciniero, in California, regarding the  
8 Telekenex quote for Shari's Restaurants.

9 52. December 1, 2008. On or about December 1, 2008, while he was employed by  
10 Straitshot, Prudell, in Washington, spoke by telephone with Joie de Vivre Hotels, in California,  
11 about setting up a webinar for Joie de Vivre to review Telekenex's "product offering."

12 53. December 1, 2008. On December 1, 2008, while he was employed by Straitshot,  
13 Prudell, in Washington, e-mailed to Ciniero and Salazar, in California, to advise that Prudell had  
14 scheduled a meeting in California for Ciniero, Salazar and Joie de Vivre's representatives to go  
15 over Telekenex's "company history, products, support colo[cation], deal."

16 54. December 2, 2008. On December 2, 2008, while he was employed by Straitshot,  
17 Prudell, in Washington, e-mailed to Ciniero and Chaney, in California, confidential Straitshot  
18 information regarding an opportunity to sell services to The Neurology Center. Prudell attached to  
19 the e-mail Straitshot's confidential service proposal for The Neurology Center. Straitshot had  
20 expended significant resources in the preceding months developing The Neurology Center as a  
21 customer and Prudell and Radford had identified it in their Straitshot sales pipeline reports for  
22 months. Despite this, Prudell and Radford perpetrated a scheme to send Telekenex confidential  
23 information regarding this sales opportunity that rightfully belonged to Straitshot.

24 55. December 3, 2008. On or about December 3, 2008, while he was employed by  
25 Straitshot, Prudell, in Washington, spoke by telephone with representatives of The Neurology  
26 Center, in California, about taking its business to Telekenex. That day, Prudell, in Washington, e-

1 mailed to Ciniero and Chaney, in California, that he had spoken to The Neurology Center “and we  
2 are a go we need to have a call next week with the customer.”

3 56. December 3, 2008. On December 3, 2008, while he was employed by Straitshot,  
4 Prudell, in Washington, e-mailed to Chaney, in California to advise that he had scheduled a  
5 meeting with Joie de Vivre to include Ciniero and Salazar with Prudell to join by telephone. He  
6 wrote: “This is killer opportunity [sic] and a great fit for you. I have an agent in AZ and we are  
7 closing a 40 point T-1 deal in January. We would like to visit them and set up a training so we can  
8 sell the customer Telekenex.”

9 57. December 3, 2008. On December 3, 2008, while he was employed by Straitshot,  
10 Radford, in Washington, e-mailed to Salazar, Chaney, and Ciniero, in California, the Telekenex  
11 agency agreement with Radford’s signature.

12 58. December 9, 2008. On December 9, 2008, while he was employed by Straitshot,  
13 Prudell, in Washington, e-mailed to Ciniero and Chaney, in California regarding The Neurology  
14 Center stating that “we need to get Terry a sales order and MSA [Master Service Agreement]. Do  
15 you have time for a call with him he wants to sign paper.”

16 59. December 12, 2008. On December 12, 2008, while they were employed by  
17 Straitshot, Prudell and Radford, in Washington, spoke by telephone with Chaney, in California  
18 about how Telekenex would solicit Straitshot’s customers by calling and e-mailing the customers  
19 with confidential Straitshot customer information to be supplied by Prudell and Radford.

20 60. December 17-22, 2008. While Mammoth was under contract with Straitshot,  
21 Worthen traveled from Wyoming to Seattle, Washington for a visit from December 17-22, 2008  
22 and stayed in Prudell’s home and, on information and belief, discussed the plan for Mammoth to  
23 move Straitshot’s customer circuits, without Straitshot’s consent, to Telekenex.

24 61. December 30, 2008. On December 30, 2008, while he was employed by Straitshot,  
25 Prudell, in Washington, sent an instant message to Worthen, in Wyoming, while Mammoth was  
26 under contract with Straitshot, stating: “Mark and I have a Telekenex call with the CEO on the 7<sup>th</sup>.”

JANUARY 2009

1  
2 62. Mammoth Supplies Confidential Information to Telekenex. In January 2009,  
3 without Straitshot's knowledge or permission, Mammoth advised Telekenex of confidential and  
4 proprietary Straitshot information including what circuits Mammoth was supplying to Straitshot,  
5 the dates those circuits were installed, the terms of the Mammoth circuits being provided to  
6 Straitshot, and the prices Mammoth was charging Straitshot for those circuits.

7 63. January Payment. Pursuant to the Deferral Agreement, in January 2009 after  
8 Mammoth issued the January 2009 invoice, Straitshot paid the invoice.

9 64. January 7, 2009. On January 7, 2009, while Mammoth was under contract with  
10 Straitshot, Worthen, in Wyoming, spoke by telephone with Prudell, in Washington, regarding the  
11 benefits of Prudell and Radford going to work for Telekenex.

12 65. January 7, 2009. On January 7, 2009, while they were employed by Straitshot,  
13 Prudell and Radford, in Washington, spoke by telephone with Chaney, in California, regarding  
14 Straitshot customers that Prudell and Radford would solicit if Telekenex hired Prudell and  
15 Radford. That day, following the phone call, Radford, in Washington, e-mailed to Chaney, in  
16 California, a list of the top Straitshot customers that Prudell and Radford had "a high probability"  
17 of being able to successfully solicit if hired by Telekenex including Straitshot customers  
18 Evergreen and The Ram Restaurants.

19 66. January 10, 2009. On January 10, 2009, while Mammoth was under contract with  
20 Straitshot and in response to Straitshot's request to Mammoth for pricing of additional circuits for  
21 Straitshot customer Super Supplements, Worthen, in Wyoming, e-mailed Prudell and Radford, in  
22 Washington, asking: "Will Super Supplements wind up with Telekenex? Let's plan that out."

23 67. January 12, 2009. On January 12, 2009, Chaney and Zabit, in California, spoke by  
24 telephone with Prudell and Radford, in Washington, and offered Prudell and Radford employment  
25 with Telekenex.

1           68.    January 13, 2009. On January 13, 2009, Chaney and Zabit, in California, spoke by  
2 telephone with Prudell and Radford, in Washington, regarding the terms of Telekenex's offers of  
3 employment to Prudell and Radford.

4           69.    January 13, 2009. On January 13, 2009, Chaney, in California, e-mailed to  
5 Radford and Prudell, in Washington, Telekenex's written offers of employment.

6           70.    January 14, 2009. On or about January 14, 2009, while he was employed by  
7 Straitshot, Prudell called Straitshot customer Evergreen and asked Evergreen to move its business  
8 from Straitshot to Telekenex. That day, Prudell, in Washington, e-mailed Chaney and Zabit, in  
9 California and reported that he "spoke to Evergreen and they want a call with you and Mammoth  
10 tomorrow. ☺ Also please call Brian [Worthen] at Mammoth ... and get the cross connects on  
11 order ASAP. Anthony [Zabit] or Brandon [Chaney] please call me on my cell ...." The cross  
12 connects referenced were the circuitry required to connect Mammoth's network to Telekenex's  
13 network to facilitate the plan to move Straitshot's existing customers to Telekenex's network  
14 without Straitshot's consent.

15           71.    January 14, 2009. On January 14, 2009, while Mammoth was under contract with  
16 Straitshot, Worthen, in Wyoming, e-mailed Zabit, Chaney, and Telekenex employee John Holst  
17 ("Holst"), in California, regarding "Network planning, timeline:"

18                   I would like to visit your offices and meet with the three of you  
19                   when possible. I will be in Denver most of next week, and could  
20                   fly out at your convenience. It would be even more beneficial if  
21                   we could time a visit while Mark Prudell is at your office to  
                    establish a transition plan – I am well-versed in what can be  
                    transitioned and how quickly. Please advise.

22           The transition plan Worthen referred to was a key component of the plan to move Straitshot  
23 customers to Telekenex's network without Straitshot's consent with the use of Straitshot's  
24 confidential and proprietary information communicated by Mammoth to Telekenex. Worthen  
25 informed Zabit, Chaney and Holst that Mammoth would continue to provide services to Straitshot  
26 until the cross-connect between Mammoth and Telekenex could be built and the Straitshot

1 customers moved to Telekenex. Mammoth did not advise Straitshot of Mammoth's intent to cut  
2 off services to Straitshot as soon as the cross-connect with Telekenex was completed.

3 72. January 15, 2009. On January 15, 2009, while he was employed by Straitshot,  
4 Prudell, in Washington, spoke by telephone with Worthen, in Wyoming, while Mammoth was  
5 under contract with Straitshot, in furtherance of the plan to move Straitshot's customer circuits off  
6 Straitshot's network and onto Telekenex's network without Straitshot's consent.

7 73. January 15, 2009. On January 15, 2009, Holst, in California, e-mailed Worthen, in  
8 Wyoming, while Mammoth was under contract with Straitshot, to make arrangements for a  
9 connection from Mammoth's network to Telekenex's network for use in the schemes to move the  
10 Straitshot customers' circuits from Straitshot to Telekenex without Straitshot's consent.

11 74. January 16, 2009. On January 16, 2009, Prudell submitted his resignation to  
12 Straitshot.

13 75. January 16, 2009. On January 16, 2009, Radford submitted his resignation to  
14 Straitshot.

15 76. Prudell and Radford Take Straitshot's Documents. When they quit their Straitshot  
16 jobs, Prudell and Radford retained copies of Straitshot's confidential information about its  
17 customers including names, contacts, circuit addresses, circuit sizes, network architecture and  
18 configuration data, contract dates and terms, and contract prices. Prudell and Radford took an  
19 electronic copy of large sections of Straitshot's CRM database, containing confidential Straitshot  
20 customer names, addresses and phone numbers and provided the electronic copy to Telekenex for  
21 use in soliciting Straitshot's customers.

22 77. Prudell and Radford Solicit Straitshot's Employees. Upon leaving their  
23 employment with Straitshot, Prudell and Radford successfully solicited Straitshot engineers Josh  
24 Summers, Sunil Modi, Justin Pauole, Scott McKay, and Stephan Dickason to leave Straitshot and  
25 come to Telekenex.

1           78.     January 20-22, 2009. Prudell and Radford traveled from Washington to California  
2 and back on January 20-22, 2009 to meet with Chaney, Zabit and others at Telekenex's San  
3 Francisco, California office to plan for the solicitation of Straitshot's customers, using the stolen  
4 Straitshot confidential customer information without Straitshot's consent.

5           79.     Straitshot Puts Telekenex on Notice of Prudell's Obligations to Straitshot. On  
6 January 20, 2009, Straitshot's counsel wrote Chaney and Prudell that Straitshot had learned of  
7 Prudell's employment with Telekenex and put Telekenex on notice that Prudell's Straitshot  
8 Employment Contract prohibited him from wrongfully soliciting Straitshot customers. The letter  
9 expressed Straitshot's expectation "that Telekenex will not take any steps to interfere with the  
10 contractual obligations of Mr. Prudell or any other former Straitshot employees to Straitshot or  
11 with Straitshot's relationships with its customers."

12           80.     January 20, 2009. On January 20, 2009 while Mammoth was under contract with  
13 Straitshot, Zabit, in California, e-mailed Worthen, in Wyoming, and Prudell and Radford to advise  
14 that Telekenex was establishing connections to Mammoth's networks emulating Straitshot's  
15 connections to Mammoth's networks to effectuate the schemes to move Straitshot's customer  
16 circuits off Straitshot's network and onto Telekenex's network and saying: "LETS GET THIS  
17 DONE!!!!!!!" referring to the Defendants' schemes to move Straitshot customers to Telekenex's  
18 network without Straitshot's consent. That day, Worthen, in Wyoming, e-mailed Zabit, in  
19 California, and Prudell and Radford to advise of the prices for making the connection between  
20 Mammoth's and Telekenex's networks.

21           81.     Summers' Employment by Straitshot. Summers signed an employment contract  
22 with Straitshot effective October 2, 2006. Initially, Summers served as a Senior Network  
23 Engineer. Beginning in early 2008, he was promoted to Director of Engineering and was  
24 responsible for managing Straitshot's technical infrastructure, internal systems, customer  
25 networks, and technical requirements. He had access to all of the Internet Protocol addresses and  
26 passwords required to access the hardware and software systems on Straitshot's network,

1 including access instructions for Straitshot's internal servers. He was part of the Straitshot senior  
2 management team and was privy to all key strategic decisions and had full access to all  
3 confidential financial information regarding Straitshot.

4 82. January 21, 2009. On January 21, 2009, while Mammoth was under contract with  
5 Straitshot, Worthen, in Wyoming, called Summers, in Washington, to discuss the "Straitshot  
6 situation" and the schemes to move Straitshot's customer circuits to Telekenex's network without  
7 Straitshot's consent.

8 83. January 22, 2009. On January 22, 2009, Zabit, in California, e-mailed Worthen, in  
9 Wyoming, while Mammoth was under contract with Straitshot, requesting that Worthen quote  
10 prices for Mammoth to provide Telekenex circuits for the Straitshot customers. Zabit attached a  
11 Straitshot spreadsheet with confidential information about Straitshot's customer networks that he  
12 obtained from Prudell and Radford. That day, Worthen, in Wyoming, e-mailed Zabit, in  
13 California, with the Mammoth pricing for Telekenex to take over all of the Straitshot customer  
14 circuits being supplied to Straitshot by Mammoth.

15 84. January 22, 2009. On January 22, 2009, using confidential Straitshot customer  
16 information, Zabit, in California, called Straitshot customer Puget Sound Gastroenterology  
17 ("PSG"), in Washington, and falsely informed PSG that Straitshot was going out of business and  
18 solicited PSG to abandon its contract with Straitshot and sign on with Telekenex at the same  
19 prices Straitshot was charging PSG. Based on Mammoth's agreement to seamlessly switch the  
20 Straitshot customers from Straitshot's network to Telekenex's network, the Defendants were able  
21 to promise PSG a seamless transition from Straitshot to Telekenex. Without Mammoth's  
22 participation in the scheme and access to Straitshot's proprietary customer information, Telekenex  
23 would have had to undertake the laborious and time-consuming task of rebuilding the PSG circuits  
24 from the ground up, vastly increasing the costs and business risks for PSG.

1           85.     January 22, 2009. On January 22, 2009, while Mammoth was under contract with  
2 Straitshot, Worthen, in Wyoming, e-mailed Zabit and Chaney, in California, and Prudell and  
3 Radford:

4                     I will have agreements and information to you by mid-afternoon  
5                     tomorrow. This will include all circuits I'm billing the other  
6                     provider [Straitshot] and the rate I would invoice Telekenex at. This  
7                     will include recommended replacements for legacy frame circuits  
8                     [currently being used by Straitshot]. By the time I conduct the  
9                     circuit review, the markup difference will be a wash with the cost-  
10                    savings I suggest. Don't fret....

11           The following day, Zabit, in California, e-mailed in response to Worthen, in Wyoming, and  
12 Prudell and Radford, in Washington, requesting that Mammoth "also include [Straitshot] install  
13 date and term/remaining term as we are negotiating this item with customers." While Mammoth  
14 was under contract with Straitshot and bound by the confidentiality provisions in its agreement  
15 with Straitshot, Worthen agreed to Zabit's request and provided the confidential contract terms  
16 and prices Mammoth was charging Straitshot.

17           86.     January 23, 2009. In response to the January 20, 2009 letters to Telekenex and  
18 Prudell from Straitshot's counsel, Telekenex requested a copy of the Prudell Employment  
19 Contract and Prudell, in Washington, sent an e-mail stating: "All we signed was an agreement to  
20 not solicit the SS employs [sic]. We are golden." Copied on Prudell's e-mail were Radford, in  
21 Washington, and Chaney, Zabit, Telekenex's Chief Financial Officer Bob Finley, and Telekenex's  
22 General Counsel Glenn Stover, in California.

23           87.     January 23, 2009. On January 23, 2009, using stolen confidential Straitshot  
24 customer information, Radford, in Washington, e-mailed Salazar and Zabit, in California, and  
25 Prudell regarding the "top 7 opp[ortunitie]s" to solicit Straitshot customers and explained that  
26 Straitshot customer "PSG is the priority today."

          88.     January 23, 2009. On January 23, 2009, using stolen confidential Straitshot  
customer information, Prudell called PSG and falsely informed PSG that Straitshot was going out

1 of business and solicited PSG to abandon its contract with Straitshot and execute a services  
2 contract with Telekenex at the same prices Straitshot was charging PSG.

3 89. January 23, 2009. On January 23, 2009, using stolen confidential Straitshot  
4 customer information, Radford, in Washington, spoke by telephone with Salazar, in California,  
5 regarding the “top 7 opp[ortunitie]s” to solicit Straitshot customers and how Telekenex would  
6 structure the contracts for these customers.

7 90. January 23, 2009. On January 23, 2009, using stolen confidential Straitshot  
8 customer information, Salazar, Zabit and Chaney, in California, and Prudell, in Washington,  
9 called Straitshot customer Evergreen, in Washington, and falsely informed Evergreen that  
10 Straitshot was going out of business and solicited Evergreen to abandon its contract with Straitshot  
11 and execute a services contract with Telekenex. Based on Mammoth’s agreement to seamlessly  
12 switch the Straitshot customers from Straitshot’s network to Telekenex’s network, the Defendants  
13 were able to promise Evergreen a seamless transition from Straitshot to Telekenex. Without  
14 Mammoth’s participation in the scheme and access to Straitshot’s confidential customer  
15 information, Telekenex would have had to undertake the laborious and time-consuming task of  
16 rebuilding the Evergreen circuits from the ground up, vastly increasing the costs and business risks  
17 for Evergreen.

18 91. January 23, 2009. On January 23, 2009, using stolen confidential Straitshot  
19 customer information, Prudell called Straitshot customer U.S. Bearings (“USB”) and falsely  
20 informed USB that Straitshot was going out of business and solicited USB to abandon its contract  
21 with Straitshot and execute a services contract with Telekenex at the same prices Straitshot was  
22 charging USB. Based on Mammoth’s agreement to switch the Straitshot customers from  
23 Straitshot’s network to Telekenex’s network, Prudell promised USB that this “should look like a  
24 billing change to you.” Without Mammoth’s participation in the scheme, Telekenex would have  
25 to undertake the laborious and time-consuming task of rebuilding the USB circuits from the  
26 ground up, vastly increasing the costs and business risks for USB.

1           92.     January 23, 2009. On January 23, 2009, Radford, in Washington, e-mailed to  
2 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot  
3 spreadsheet containing confidential information about Straitshot's network for Evergreen and  
4 asked Salazar to propose a Telekenex contract for the services outlined in the Straitshot  
5 spreadsheet.

6           93.     January 23, 2009. On January 23, 2009, using stolen confidential Straitshot  
7 customer information, Prudell called Straitshot Customer Super Supplements and falsely informed  
8 Super Supplements that Straitshot was going out of business and solicited Super Supplements to  
9 abandon its contract with Straitshot and execute a services contract with Telekenex at the same  
10 prices Straitshot was charging Super Supplements. Based on Mammoth's agreement to  
11 seamlessly switch the Straitshot customers from Straitshot's network to Telekenex's network,  
12 Prudell was able to promise Super Supplements a seamless transition from Straitshot to  
13 Telekenex. Without Mammoth's participation in the scheme and access to Straitshot's  
14 confidential customer information, Telekenex would have had to undertake the laborious and  
15 time-consuming task of rebuilding the Super Supplements circuits from the ground up, vastly  
16 increasing the costs and business risks for Super Supplements.

17           94.     January 23-26, 2009. While employed by Straitshot, Summers traveled from  
18 Washington to California and back on January 23-26, 2009 to meet with Zabit at Telekenex's  
19 offices in San Francisco and to plan for Summers' employment with Telekenex and the  
20 solicitation of Straitshot's customers.

21           95.     January 24, 2009. On January 24, 2009, using confidential Straitshot customer  
22 information and while Mammoth was under contract with Straitshot, Worthen, in Wyoming, e-  
23 mailed Prudell, in Washington, with a quote for a circuit for Straitshot customer Super  
24 Supplements and asked: "Shall I contract this as Telekenex?"

25           96.     January 24, 2009. On January 24, 2009, while Mammoth was under contract with  
26 Straitshot, Worthen, in Wyoming, e-mailed Zabit, in California, and Prudell and Radford, in

1 Washington, with a spreadsheet containing confidential information about Straitshot's customer  
2 networks, including the prices Mammoth was charging Straitshot for the underlying circuits, and  
3 the price Mammoth would charge Telekenex to move the customers from Straitshot's network to  
4 Telekenex's network and asked "what Telekenex [was] going to do to sweeten the pot" for  
5 Worthen and Mammoth as additional compensation for Worthen's participation in the conspiracy.

6 97. January 25, 2009. On January 25, 2009, while Mammoth was under contract with  
7 Straitshot, Worthen, in Wyoming, e-mailed Zabit, in California, and Prudell and Radford, in  
8 Washington, the contracts for Telekenex to execute which would authorize the interconnection  
9 between Telekenex's network and Mammoth's network that would allow Mammoth to move  
10 Straitshot's customers to Telekenex's network and avoid the laborious and time-consuming need  
11 for Telekenex to build the circuits from the ground up.

12 98. January 25, 2009. On January 25, 2009, Radford, in Washington, e-mailed to  
13 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot  
14 spreadsheet containing confidential information about Straitshot's network for USB and asked  
15 Salazar to prepare a Telekenex contract for the services outlined in the Straitshot spreadsheet.

16 99. January 25, 2009. On January 25, 2009, Radford, in Washington, e-mailed to  
17 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot  
18 spreadsheet containing confidential information about Straitshot's network for Straitshot customer  
19 Norco and asked Salazar to prepare a Telekenex contract for the services outlined in the Straitshot  
20 spreadsheet.

21 100. January 25, 2009. On January 25, 2009, Radford, in Washington, e-mailed to  
22 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot  
23 spreadsheet containing confidential information about Straitshot's network for Straitshot customer  
24 Daniel Parmele Law and asked Salazar to prepare a Telekenex contract for the services outlined in  
25 the Straitshot spreadsheet.

1           101.   January 25, 2009. On January 25, 2009, Radford, in Washington, e-mailed to  
2 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot  
3 spreadsheet containing confidential information about Straitshot’s network for Straitshot customer  
4 Electrical Wholesale Supply (“EWS”) and asked Salazar to prepare a Telekenex contract for the  
5 services outlined in the Straitshot spreadsheet.

6           102.   January 25, 2009. On January 25, 2009, Radford, in Washington, e-mailed to  
7 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot  
8 spreadsheet containing confidential information about Straitshot’s network for Straitshot customer  
9 The Ram and asked Salazar to prepare a Telekenex contract for the services outlined in the  
10 Straitshot spreadsheet.

11           103.   January 25, 2009. On January 25, 2009, Radford, in Washington, e-mailed to  
12 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot  
13 spreadsheet containing confidential customer information about Straitshot’s proposed network for  
14 customer Buffalo Exchange and asked Salazar to prepare a Telekenex contract for the services  
15 outlined in the Straitshot spreadsheet.

16           104.   January 26, 2009. On January 26, 2009, using stolen confidential Straitshot  
17 customer information, Chaney, in California, spoke by telephone with Straitshot customer PSG, in  
18 Washington, and falsely informed PSG that Straitshot was going out of business and solicited PSG  
19 to abandon its contract with Straitshot and execute a services contract with Telekenex at the same  
20 prices Straitshot was charging PSG.

21           105.   January 26, 2009. On January 26, 2009, using stolen confidential Straitshot  
22 customer information, Prudell spoke by telephone with Straitshot customer The Ram and falsely  
23 informed The Ram that Straitshot was going out of business and solicited The Ram to abandon its  
24 contract with Straitshot and execute a services contract with Telekenex at the same prices  
25 Straitshot was charging The Ram.

26

1           106.   Prudell Threatens Straitshot Investor. On January 26, 2009, Prudell, in  
2 Washington, called Stephen Perry, CEO of the manager of Straitshot’s primary investor, in New  
3 York. Perry told Prudell that using confidential Straitshot information Prudell had acquired while  
4 an employee of Straitshot to solicit Straitshot customers on behalf of Telekenex was unlawful.  
5 Prudell informed Perry that Prudell was not acting as a “lone wolf” and that Telekenex’s executive  
6 team was fully aware of what he was doing and would protect him. Prudell threatened that he  
7 would report a purported Straitshot “tax problem” to the IRS if Straitshot sued him. Perry  
8 instructed Prudell to report any such tax problem to the IRS immediately. Several days later,  
9 Perry reported the substance of Prudell’s comments to Zabit.

10           107.   January 26, 2009. On January 26, 2009, Telekenex offered employment to  
11 Summers beginning February 10, 2009. On January 28, 2009, Summers accepted the Telekenex  
12 job offer, but did not inform Straitshot thereof.

13           108.   Summers Takes Straitshot’s Laptop and Confidential Information. Summers took  
14 from Straitshot a laptop belonging to Straitshot along with confidential Straitshot customer  
15 documents and data that showed how each Straitshot customer’s network was built, what kind of  
16 circuits each Straitshot customer had, what the IP addresses were of the Straitshot customer  
17 circuits, when Straitshot had installed its customer circuits, who the underlying carriers were for  
18 the Straitshot customer circuits, and the amount of Straitshot monthly revenue derived from each  
19 of the Straitshot customers and other valuable confidential information belonging to Straitshot.  
20 Summers uploaded the confidential Straitshot customer documents from Straitshot’s laptop on to  
21 Telekenex’s network for use by Telekenex staff in soliciting and moving Straitshot customers  
22 from Straitshot’s network to Telekenex’s network. Summers used the stolen Straitshot documents  
23 on the Straitshot laptop to build spreadsheets to plan the movement of Straitshot’s customers to  
24 Telekenex’s network. In an attempt to cover-up his theft of Straitshot’s confidential customer  
25 information, and despite the Second Temporary Restraining Order entered by the King County  
26 Superior Court on February 13, 2009 (the “Second TRO”) specifically prohibiting the altering of

1 any documents on the Straitshot laptop, Summers attempted, ineffectively, to delete all of the  
2 documents from the Straitshot laptop. When Summers finally complied with the Court's order to  
3 return the laptop to Straitshot two months after leaving Straitshot, a forensic examination of the  
4 computer uncovered the attempted destruction of evidence and recovered the documents.

5 109. January 26, 2009. On January 26, 2009, using stolen confidential Straitshot  
6 customer information, Prudell e-mailed to Straitshot customer PSG Telekenex contracts for the  
7 services being provided to PSG under contract with Straitshot.

8 110. January 26, 2009. On January 26, 2009, Radford, in Washington, e-mailed to  
9 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot  
10 spreadsheet containing confidential information about Straitshot's network for Straitshot customer  
11 Super Supplements and asked Salazar to prepare a Telekenex contract for the services outlined in  
12 the Straitshot spreadsheet.

13 111. January 26, 2009. On January 26, 2009, using stolen confidential Straitshot  
14 customer information, Prudell, in Washington, spoke by telephone with Straitshot customer  
15 Evergreen's agent Renee Bowman ("Bowman"), in Oregon, and falsely informed Bowman that  
16 Straitshot was going out of business and solicited Evergreen to abandon its contract with Straitshot  
17 and execute a services contract with Telekenex at the same prices Straitshot was charging  
18 Evergreen.

19 112. January 26, 2009. On January 26, 2009, using stolen confidential Straitshot  
20 customer information, Prudell, in Washington, e-mailed Zabit, in California, Worthen, in  
21 Wyoming, and Straitshot customer PSG, in Washington, requesting that Mammoth, while  
22 Mammoth was under contract with Straitshot, complete a circuit order for PSG previously placed  
23 by PSG with Straitshot.

24 113. January 26, 2009. On January 26, 2009, using stolen confidential Straitshot  
25 customer information, Prudell e-mailed Straitshot customer Boys and Girls Club and asked that  
26 Boys and Girls Club call Prudell.

1           114. January 26, 2009. On January 26, 2009, Radford, in Washington, e-mailed to  
2 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot  
3 spreadsheet containing confidential information about Straitshot's network for Straitshot customer  
4 A-Dec and asked Salazar to prepare a Telekenex contract for the services outlined in the Straitshot  
5 spreadsheet.

6           115. January 26, 2009. On January 26, 2009, using stolen confidential Straitshot  
7 customer information, Prudell and Radford, in Washington, called USB's agent Carol Sorenson  
8 ("Sorenson"), in Oregon, and falsely informed Sorenson that Straitshot was going out business and  
9 solicited USB to abandon its contract with Straitshot and execute a services contract with  
10 Telekenex at the same prices Straitshot was charging USB.

11           116. January 26, 2009. On January 26, 2009, using stolen confidential Straitshot  
12 customer information, Prudell and Radford, in Washington, and Zabit and Bani, in California,  
13 called Straitshot customer The Ram, in Washington, and falsely informed The Ram that Straitshot  
14 was going out of business and solicited The Ram to abandon its contract with Straitshot and  
15 execute a services contract with Telekenex at the same prices Straitshot was charging The Ram.

16           117. January 26, 2009. On January 26, 2009, Radford, in Washington, e-mailed to  
17 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot  
18 spreadsheet containing confidential information about Straitshot's network for Straitshot customer  
19 Steen Outdoor Advertising ("Steen") and asked Salazar to prepare a Telekenex contract for the  
20 services outlined in the Straitshot spreadsheet.

21           118. January 26, 2009. On January 26, 2009, Radford, in Washington, e-mailed to  
22 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot  
23 spreadsheet containing confidential information about Straitshot's network for Straitshot customer  
24 Velocity Express and asked Salazar to prepare a Telekenex contract for the services outlined in the  
25 Straitshot spreadsheet.

26

1           119. January 26, 2009. On January 26, 2009, Radford, in Washington, e-mailed to  
2 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot  
3 spreadsheet containing confidential information about Straitshot's network for Straitshot customer  
4 Pacific Housing Advisors and asked Salazar to prepare a Telekenex contract for the services  
5 outlined in the Straitshot spreadsheet.

6           120. January 26, 2009. On January 26, 2009, using stolen confidential Straitshot  
7 customer information, Salazar, in California, e-mailed to Radford and Prudell, in Washington, the  
8 Telekenex contract for use in soliciting Straitshot customer Super Supplements.

9           121. January 26, 2009. On January 26, 2009, using stolen confidential Straitshot  
10 customer information, Radford e-mailed to Straitshot customer Super Supplements the proposed  
11 Telekenex contract and requested that Super Supplements participate in a telephone call with  
12 Telekenex to discuss the proposed contract.

13           122. January 26, 2009. On January 26, 2009, Radford, in Washington, e-mailed Zabit,  
14 Chaney, Salazar, Bani and Ciniero, in California, and Prudell, in Washington to celebrate the first  
15 successes in Defendants' conspiracy, announcing Telekenex's successful efforts to induce  
16 Straitshot's customers to abandon Straitshot for Telekenex:

17                   We just got out Evergreen, US Bearing, and Super Supplements.  
18                   Joel [Ciniero] also finished up the RAM waiting for Karen  
19                   [Salazar]'s review. Next in order of priority should be Boys and  
20                   Girls Club, Norco, Pacific Housing Advisors, and Velocity Express.  
                    I believe that leaves A-Dec, Steen, Electrical Wholesale, and DPL,  
                    in the que [sic].

21           123. January 27, 2009. On January 27, 2009, using stolen confidential Straitshot  
22 customer information, Radford e-mailed to Straitshot customer The Ram the proposed Telekenex  
23 contract and requested that The Ram participate in a telephone call with Telekenex to discuss the  
24 proposed contract.

25           124. January 27, 2009. On January 27, 2009, Radford, in Washington, e-mailed to  
26 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot

1 spreadsheet containing confidential information about Straitshot's network for Straitshot customer  
2 Tenet Federal Credit Union and asked Salazar to prepare a Telekenex contract for the services  
3 outlined in the Straitshot spreadsheet.

4 125. January 27, 2009. On January 27, 2009, Radford, in Washington, e-mailed to  
5 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot  
6 spreadsheet containing confidential information about Straitshot's network for Straitshot customer  
7 Ace Hardware and asked Salazar to prepare a Telekenex contract for the services outlined in the  
8 Straitshot spreadsheet.

9 126. January 27, 2009. On January 27, 2009, Radford, in Washington, e-mailed to  
10 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot  
11 spreadsheet containing confidential information about Straitshot's network for Straitshot customer  
12 Alpine Mortgage and asked Salazar to prepare a Telekenex contract for the services outlined in the  
13 Straitshot spreadsheet.

14 127. January 27, 2009. On January 27, 2009, Radford, in Washington, e-mailed to  
15 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot  
16 spreadsheet containing confidential information about Straitshot's network for Straitshot customer  
17 Boys and Girls Club and asked Salazar to prepare a Telekenex contract for the services outlined in  
18 the Straitshot spreadsheet.

19 128. January 27, 2009. On January 27, 2009, Radford, in Washington, e-mailed to  
20 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot  
21 spreadsheet containing confidential information about Straitshot's network for Straitshot customer  
22 Bastian Material Handling and asked Salazar to prepare a Telekenex contract for the services  
23 outlined in the Straitshot spreadsheet.

24 129. January 27, 2009. On January 27, 2009, using stolen confidential Straitshot  
25 customer information and while Mammoth was under contract with Straitshot, Prudell, in  
26 Washington, e-mailed to Zabit and Chaney, in California, Worthen, in Wyoming, and Straitshot

1 customer Norco, in Idaho, to schedule a time for Telekenex to call Norco to solicit Norco to  
2 abandon its contract with Straitshot and execute a services contract with Telekenex.

3 130. January 27, 2009. On January 27, 2009, using stolen confidential Straitshot  
4 customer information, Salazar, in California, e-mailed to Radford and Prudell, in Washington, and  
5 Chaney and Zabit, in California, the Telekenex contract for use in soliciting Straitshot customer  
6 EWS and to advise that Telekenex contracts for Straitshot customers “Norco, Pacific Housing,  
7 Boys & Girls Club & others are following soon.”

8 131. January 27, 2009. On January 27, 2009, Prudell, in Washington, e-mailed Zabit,  
9 Chaney and Bani, in California, and Radford, in Washington, to suggest that Prudell and Radford  
10 supply stolen confidential information about Straitshot’s customers to other salespeople at  
11 Telekenex so those salespeople could solicit Straitshot customers to abandon their contracts with  
12 Straitshot and execute service contracts with Telekenex.

13 132. January 27, 2009. On January 27, 2009, using stolen confidential Straitshot  
14 customer information, Radford, in Washington, e-mailed Straitshot customer Norco, in Idaho,  
15 Zabit and Chaney, in California, Prudell, in Washington, and Zabit, in Wyoming, the proposed  
16 Telekenex contract and requested that Norco participate in a telephone call with Telekenex to  
17 discuss the proposed contract. While Mammoth was under contract with Straitshot, Worthen, in  
18 Wyoming, e-mailed in response to Prudell, in Washington: “Bang this one out!”

19 133. January 27, 2009. On January 27, 2009, using stolen confidential Straitshot  
20 customer information, Radford e-mailed to Straitshot customer Boys and Girls Club the proposed  
21 Telekenex contract and requested that Boys and Girls Club participate in a telephone call with  
22 Telekenex to discuss the proposed contract.

23 134. Straitshot Puts Telekenex and Prudell on Further Notice of Straitshot’s Rights. On  
24 January 28, 2009, Straitshot’s counsel wrote to Zabit a letter that was copied on Prudell, Radford,  
25 Chaney, Stover and Finley, as follows:

26 It has since come to our attention that Telekenex also has hired  
former Straitshot Communications employee Mark Radford.

1 Please be advised that completely independent from the non-  
2 solicitation issue we raised previously, Mesrrs. Prudell and Radford  
3 are prohibited from disclosing to, or using on behalf of, Telekenex  
4 information about Straitshot Communications' customers including  
5 their names, contact information, information about the services  
6 they purchased from Straitshot Communications, and the dates upon  
7 which the customer contracts with Straitshot are set to expire. This  
8 information is a protected trade secret under the Uniform Trade  
9 Secrets Act, Chapter 19.108 RCW and under their employment  
10 contracts.

11 The January 28 letter specifically quoted the Non-Competition and Confidentiality Obligation  
12 provision of the Prudell and Radford Employment Contracts. Furthermore, the letter stated:

13 Information about Straitshot Communications' customers is a trade  
14 secret which Mesrrs. Prudell and Radford are bound to keep  
15 confidential.

16 The Washington Supreme Court reaffirmed this principle in *Ed*  
17 *Nowogroski Insurance, Inc. v. Rucker*, 137 Wn.2d 427 (1999). The  
18 Court explained:

19 Absent a contract to the contrary, an employee is free  
20 to compete against his or her former employer, and a  
21 former employee may use general knowledge, skills  
22 and experience acquired during the prior employment  
23 in competing with a former employer. However, an  
24 employee may not use or disclose trade secrets  
25 belonging to the former employer to actively solicit  
26 customers from a confidential customer list.

*Id.* at 450. The fact that the former employee recalls the customer  
information from memory is of no import. *Id.*

Consequently, Mesrrs. Prudell and Radford are prohibited from  
disclosing confidential information about Straitshot  
Communications' customers including, without limitation, their  
identity, the nature of their agreements with Straitshot  
Communications, and the termination date of their contracts with  
Straitshot. Use of Straitshot Communications' trade secrets in  
violation of their contracts and statutory law will result in personal  
liability for each of these former employees. Additionally, as the  
Supreme Court recognized in *Nowogroski*, a subsequent employer  
who permits former employees of a competitor to use such  
confidential information on behalf of the new employer will be held  
liable for interference with contractual obligations and resulting  
damages to the former employer.

1 We were alarmed to read the January 23 e-mail from Mr. Prudell  
2 (“All we signed was an agreement to not solicit the SS employs  
3 [sic]. We are golden.”) suggesting he intends to use (or has already  
4 used) Straitshot Communications’ trade secrets in his work for  
5 Telekenex. In fact, we have spoken with a number of current  
6 customers who report that Mr. Prudell is not only utilizing his  
7 knowledge of Straitshot Communications’ trade secrets but that he is  
8 also misrepresenting himself as somehow “working with” Straitshot  
9 Communications in “transitioning customers” to Telekenex. The  
10 resulting impact on Straitshot’s business and consequential damages  
11 is enormous. Mr. Prudell’s e-mail indicates that you and various  
12 persons at Telekenex are aware of Mr. Prudell’s activities. The  
13 exposure that you and various individuals at Telekenex, as well as  
14 the company itself, face is clear. We further understand that your  
15 group is currently soliciting employees of Straitshot. This conduct  
16 further demonstrates the ill-advised activities of individuals at your  
17 company, the company itself, as well as Mr. Prudell. Given what  
18 we have learned, we are investigating Telekenex’ conduct in this  
19 matter.

20 We expect that Telekenex will abide by Washington law and will  
21 refrain from competing with Straitshot Communications in any  
22 manner that makes use of Straitshot Communications’ confidential  
23 customer information obtained from any of Straitshot  
24 Communications’ former employees or misrepresents the nature of  
25 the employees’ current employment. Please confirm immediately  
26 that this is the case.

Equivalent letters were sent directly to Prudell and Radford on January 28, 2009 and copied on the above-mentioned Telekenex executives.

135. January 28, 2009. On January 28, 2009, using stolen confidential Straitshot customer information, Prudell spoke by telephone with Straitshot customer The Ram to solicit The Ram to abandon its contract with Straitshot and execute a services contract with Telekenex at the same prices Straitshot was charging The Ram.

136. January 28, 2009. On January 28, 2009, using stolen confidential Straitshot customer information, Prudell and Radford, in Washington, and Zabit, Chaney, and Bani, in California, spoke by telephone with Straitshot customer Norco, in Idaho, to solicit Norco to abandon its contract with Straitshot and execute a services contract with Telekenex at the same prices Straitshot was charging Norco.

1           137. January 28, 2009. On January 28, 2009, using stolen confidential Straitshot  
2 customer information and while he was a Straitshot employee, Summers e-mailed Straitshot  
3 customer The Ram to explain, from a technical perspective, the difference between Straitshot's  
4 network for The Ram and the proposed Telekenex network for The Ram and how Telekenex  
5 intended to accomplish the move of The Ram's network off Straitshot's circuits.

6           138. January 28, 2009. On January 28, 2009, Radford, in Washington, e-mailed to  
7 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot  
8 spreadsheet containing stolen confidential information about Straitshot's network for Straitshot  
9 customer Black Angus and asked Salazar to prepare a Telekenex contract for the services outlined  
10 in the Straitshot spreadsheet.

11           139. Telekenex Hires Straitshot's Engineers. Telekenex knew of the Straitshot  
12 Employment Contracts which prohibited Prudell and Radford from soliciting Straitshot  
13 employees. Nonetheless, fully aware that Prudell and Radford were soliciting Straitshot's  
14 engineers, Telekenex immediately hired the four remaining Straitshot engineers.

15           140. The Loss of its Engineers Was Devastating to Straitshot. The loss of its entire  
16 engineering department, at once, immediately following the departure of Prudell and Radford, was  
17 devastating for Straitshot.

18           141. Summers Refused to Provide Straitshot With its Mission Critical Data. The loss  
19 caused Straitshot by the overnight departure to Telekenex of its entire engineering department was  
20 compounded by Summers' refusal, while he remained a Straitshot employee, to provide to  
21 Straitshot's management Straitshot's mission critical data. While Summers was a Straitshot  
22 employee, Straitshot's CEO instructed Summers to document for Straitshot all of Straitshot's IP  
23 addresses and passwords required to access the hardware and software systems in Straitshot's  
24 network, and instructions for accessing Straitshot's internal servers and CRM database. Despite  
25 repeated requests that Summers provide this critical information to Straitshot so that it could  
26 continue to operate its business and support its customers, Summers stubbornly refused to provide

1 to Straitshot the information about its own systems. In stark contrast, Summers willingly supplied  
2 this same highly confidential and valuable Straitshot information to Telekenex in order to facilitate  
3 Defendants' schemes.

4 142. January 29, 2009. On January 29, 2009, using stolen confidential Straitshot  
5 customer information, Radford and Prudell, in Washington, and Bani, in California, spoke by  
6 telephone with Straitshot customer Steen, in Pennsylvania, to solicit Steen to abandon its contract  
7 with Straitshot and execute a services contract with Telekenex at the same prices Straitshot was  
8 charging Steen.

9 143. January 29, 2009. On January 29, 2009, Radford, in Washington, e-mailed to  
10 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot  
11 spreadsheet containing confidential information about Straitshot's network for Straitshot customer  
12 Cascade Coffee and asked Salazar to prepare a Telekenex contract for the services outlined in the  
13 Straitshot spreadsheet.

14 144. January 29, 2009. On January 29, 2009, using stolen confidential Straitshot  
15 customer information, Salazar, in California, e-mailed to Radford and Prudell, in Washington, and  
16 Chaney and Zabit, in California, the Telekenex contract for use in soliciting Straitshot customer  
17 Ace Hardware.

18 145. January 29, 2009. On January 29, 2009, using stolen confidential Straitshot  
19 customer information, Radford and Prudell, in Washington, and Chaney, Zabit and Bani, in  
20 California, spoke by telephone with Straitshot customer Evergreen, in Washington, about how  
21 Telekenex proposed to move Straitshot's Evergreen network to Telekenex's network.

22 146. January 29, 2009. On January 29, 2009, Radford, in Washington, e-mailed to  
23 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot  
24 spreadsheet containing confidential information about Straitshot's network for Straitshot customer  
25 Carpenters' Trust and asked Salazar to prepare a Telekenex contract for the services outlined in  
26 the Straitshot spreadsheet.

1           147. January 29, 2009. On January 29, 2009, Radford, in Washington, e-mailed to  
2 Chaney, Zabit and Bani, in California, and Prudell, in Washington a script to be used by  
3 Telekenex employees to solicit the Straitshot customers that had been identified as being “fourth  
4 tier” by Telekenex. The script falsely stated that Straitshot was going out of business and that  
5 Straitshot’s services were being interrupted by the underlying circuit carriers and solicited the  
6 Straitshot customers to abandon their contracts with Straitshot and sign on with Telekenex at the  
7 same prices Straitshot was charging the customers. Bani circulated the script to Telekenex  
8 salespeople Aaron Kanahale, Tim Healy, Lorenzo Henderson, Leonard Williams, Dominick  
9 Nivoli, Benjamin Jones, Jon Rief, and Oscar Molnar, each of whom used the script along with  
10 stolen confidential information about Straitshot’s customers provided by Prudell and Radford to  
11 solicit Straitshot’s customers to abandon their contracts with Straitshot and sign on with  
12 Telekenex. On January 30, 2009, Prudell, in Washington, e-mailed each of these Telekenex  
13 salespeople, in California, to wish them “happy hunting.”

14           148. January 29, 2009. On January 29, 2009, using stolen confidential Straitshot  
15 customer information, Chaney, in California, e-mailed Straitshot customer Evergreen, in  
16 Washington, to explain the terms of the proposed Telekenex contract.

17           149. Straitshot Forwards Employment Contracts to Telekenex. On January 30, 2009,  
18 per the request of Telekenex, Straitshot forwarded to Telekenex copies of the signed Prudell and  
19 Radford Employment Contracts.

20           150. January 30, 2009. On January 30, 2009, while Mammoth was under contract with  
21 Straitshot, Zabit, in California, e-mailed Worthen, in Wyoming: “We have now hired all of the  
22 straitshot engineers. Are you able to get together on a call?”

23           151. January 30, 2009. On January 30, 2009, Prudell e-mailed Straitshot customer  
24 Evergreen, Summers, who continued to be a Straitshot employee, and the former Straitshot  
25 engineers and informed Evergreen that Telekenex had “set up a toll free number that will get you  
26 to your previous engineers” from Straitshot.

1           152.   January 30, 2009. On January 30, 2009, a representative of Straitshot customer  
2 Alpha Packaging, in New York, e-mailed Straitshot as follows: “Are you guys in trouble as we  
3 have some other company calling us saying the circuits are being turned off because Straitshot is  
4 out of business.” Alpha Packaging confirmed that the company that had made the false  
5 representations about Straitshot was Telekenex.

6           153.   January 30, 2009. On January 30, 2009, Straitshot customer Stellar Recovery, Inc.  
7 reported to Straitshot that:

8                   I’ve just been contacted by Lenny Williams from Telekenex .... He  
9 indicated that Straitshot is in some extreme financial trouble right  
10 now and Straitshot customers are in jeopardy of their circuits with  
11 underlying carriers being disconnected due to non payment. I’m  
trying to validate these claims and make appropriate decisions to  
prevent our remote offices from disruption in service.

12 In a follow-up e-mail, a Stellar Recovery, Inc. representative wrote: “I ... have a GREAT concern  
13 over unethical practices of your x-employees. I don’t know who to believe. Put yourself in my  
14 position.”

15           154.   January 30, 2009. On January 30, 2009, using confidential Straitshot customer  
16 information supplied by Prudell and Radford and the script drafted by Radford, Telekenex  
17 salesman Oscar Molnar, in California, called Straitshot customer Sound Oral & Maxillofacial  
18 (“Sound Oral”), in Washington, and falsely stated that Straitshot was going out of business and  
19 solicited Sound Oral to abandon its contract with Straitshot and execute a services contract with  
20 Telekenex at the same prices Straitshot was charging Sound Oral.

21           155.   January 30, 2009. On January 30, 2009, using stolen confidential Straitshot  
22 customer information supplied by Prudell and Radford and the script drafted by Radford,  
23 Telekenex salesman Aaron Kanahale called Straitshot customer Kruger Bensen Ziemer Architects,  
24 Inc. (“KBZ”) and falsely stated that Straitshot was going out of business and solicited KBZ to  
25 abandon its contract with Straitshot and execute a services contract with Telekenex at the same  
26 prices Straitshot was charging KBZ.

1           156.   January 30, 2009. On January 30, 2009, using stolen confidential Straitshot  
2 customer information supplied by Prudell and Radford and the script drafted by Radford,  
3 Telekenex salesman Leonard Williams called Straitshot customer Trumark Companies and falsely  
4 stated that Straitshot was going out of business and solicited Trumark Companies to abandon its  
5 contract with Straitshot and execute a services contract with Telekenex at the same prices  
6 Straitshot was charging Trumark Companies.

7           157.   January 30, 2009. On January 30, 2009, using stolen confidential Straitshot  
8 customer information supplied by Prudell and Radford and the script drafted by Radford,  
9 Telekenex salesman Oscar Molnar, in California, called Straitshot customer Pacific Bag, in  
10 Washington, and falsely stated that Straitshot was going out of business and solicited Pacific Bag  
11 to abandon its contract with Straitshot and execute a services contract with Telekenex at the same  
12 prices Straitshot was charging Pacific Bag.

13           158.   January 30, 2009. On January 30, 2009, using stolen confidential Straitshot  
14 customer information supplied by Prudell and Radford and the script drafted by Radford,  
15 Telekenex salesman Leonard Williams, in California, called Straitshot customer San Juan  
16 Navigation, in Washington, and falsely stated that Straitshot was going out of business and  
17 solicited San Juan Navigation to abandon its contract with Straitshot and execute a services  
18 contract with Telekenex at the same prices Straitshot was charging San Juan Navigation.

19           159.   January 30, 2009. On January 30, 2009, using stolen confidential Straitshot  
20 customer information supplied by Prudell and Radford and the script drafted by Radford,  
21 Telekenex salesman Jon Rief called Straitshot customer Chaser Aerodynamics, LLC (“Chaser”)  
22 and falsely stated that Straitshot was going out of business and solicited Chaser to abandon its  
23 contract with Straitshot and execute a services contract with Telekenex at the same prices  
24 Straitshot was charging Chaser.

25           160.   January 30, 2009. On January 30, 2009, using stolen confidential Straitshot  
26 customer information supplied by Prudell and Radford and the script drafted by Radford,

1 Telekenex salesman Tim Healy, in California, called Straitshot customer Alpha Packaging, in  
2 New York, and falsely stated that Straitshot was going out of business and solicited Alpha  
3 Packaging to abandon its contract with Straitshot and execute a services contract with Telekenex  
4 at the same prices Straitshot was charging Alpha Packaging.

5 161. January 30, 2009. On January 30, 2009, using stolen confidential Straitshot  
6 customer information, Radford, in Washington, spoke by telephone with CMS Enterprises, in  
7 Oregon, and USB, in Washington, and falsely stated that Straitshot was going out of business and  
8 solicited USB to abandon its contract with Straitshot and execute a services contract with  
9 Telekenex at the same prices Straitshot was charging USB.

10 162. January 30, 2009. On January 30, 2009, while he was a Straitshot employee,  
11 Summers, in Washington, e-mailed to the Telekenex engineers, in California, that he would be the  
12 engineer on duty for Telekenex managing the “transition” of Straitshot customers to Telekenex.

13 163. January 31, 2009. On January 31, 2009, while he was a Straitshot employee,  
14 Summers, in Washington, e-mailed to Zabit and Telekenex employee Charles Hampton, in  
15 California, that Summers was creating spreadsheets showing how Telekenex would technically  
16 accomplish the movement of the Straitshot customers from the Straitshot network to Telekenex’s  
17 network. Summers used stolen Straitshot spreadsheets containing confidential information about  
18 Straitshot customer networks to create the spreadsheets that Telekenex used to plan for, and  
19 accomplish, the movement of Straitshot customers from Straitshot’s network to Telekenex’s  
20 network.

21 164. Straitshot Contracts with Voxitas to Refer Straitshot Customers. As a result of the  
22 actions taken by Mammoth and Telekenex, Straitshot’s goodwill among its customers was  
23 severely damaged. To mitigate damages to its customers and to itself, Straitshot contracted with  
24 another managed network services provider, Voxitas, to refer Straitshot’s customers to Voxitas.  
25 In exchange for each successful referral, Voxitas would pay Straitshot a residual commission on  
26

1 ongoing revenues received from the referred customers. Mr. Gold advised Worthen of this  
2 agreement.

3 FEBRUARY 2009

4 165. Mammoth Refuses to Abide by the Deferral Agreement. Contrary to the Deferral  
5 Agreement, on February 2, 2009, Worthen e-mailed Mr. Gold and demanded that Straitshot pre-  
6 pay by February 13, 2009 \$30,000 of the as-yet-unissued February 27, 2009 Mammoth invoice.  
7 Mammoth advised Telekenex of this demand.

8 166. February 2, 2009. On or about February 2, 2009, using stolen confidential  
9 Straitshot customer information, Prudell, in Washington, called Straitshot customer Ace  
10 Hardware, in Hawaii, and falsely stated that Straitshot was going out of business, and solicited  
11 Ace Hardware to abandon its contract with Straitshot and execute a services contract with  
12 Telekenex at the same prices Straitshot was charging Ace Hardware. That day, Prudell e-mailed  
13 the proposed Telekenex contract and requested that Ace Hardware execute it.

14 167. February 2, 2009. On February 2, 2009, while he was a Straitshot employee and  
15 using stolen confidential Straitshot customer information, Summers communicated with Straitshot  
16 customer PSG to manage the technical transition of PSG's Straitshot network to Telekenex's  
17 network. He sought to avoid involving Prudell in that process to allow Prudell to focus on his  
18 latest role in Defendants' schemes – specifically, to “dial for dollars” by soliciting other Straitshot  
19 customers to abandon their contracts with Straitshot and execute service contracts with Telekenex.  
20 Using Straitshot's confidential password and log on protocols, but without authorization from or  
21 notice to Straitshot, Summers logged in to Straitshot's routers and made changes to Straitshot's  
22 network for PSG.

23 168. February 2, 2009. On February 2, 2009, using stolen confidential Straitshot  
24 customer information, Bani, in California, and Prudell and Radford, in Washington, spoke by  
25 telephone with Straitshot customer Evergreen, in Washington, regarding moving Evergreen off  
26 Straitshot's network and on to Telekenex's network.

1           169. February 2, 2009. On February 2, 2009, using stolen confidential Straitshot  
2 customer information, Radford and Prudell, in Washington, called Straitshot customer DuCharme  
3 McMillen, in Indiana, and left a voicemail message on behalf of Telekenex. That day, using  
4 stolen confidential Straitshot customer information, Radford, in Washington, e-mailed DuCharme  
5 McMillen, in Indiana, that Radford “[n]eed[ed] to talk with you about what’s going on over at  
6 Straitshot and your network. Please give me a call back as soon as you can to discuss.”

7           170. February 2, 2009. On February 2, 2009, using stolen confidential Straitshot  
8 customer information, Radford called Straitshot customer The Neurology Center and falsely stated  
9 that Straitshot was going out of business and solicited The Neurology Center to abandon its  
10 contract with Straitshot and execute a services contract with Telekenex at the same prices charged  
11 by Straitshot. As a result, The Neurology Center cancelled its contract with Straitshot.

12           171. February 3, 2009. On February 3, 2009, using stolen confidential Straitshot  
13 customer information, Bani and Ciniero, in California, and Prudell and Radford, in Washington,  
14 spoke by telephone with Straitshot customer DuCharme McMillen, in Indiana, and falsely stated  
15 that Straitshot was going out of business and solicited DuCharme McMillen to abandon its  
16 contract with Straitshot and execute a services contract with Telekenex at the same prices  
17 Straitshot was charging DuCharme McMillen.

18           172. February 3, 2009. On February 3, 2009, using stolen confidential Straitshot  
19 customer information, Bani, in California, and Radford and Prudell, in Washington, spoke by  
20 telephone with Straitshot customer The Ram, in Washington, and falsely stated that Straitshot was  
21 going out of business and solicited The Ram to abandon its contract with Straitshot and execute a  
22 services contract with Telekenex at the same prices Straitshot was charging The Ram.

23           173. February 3, 2009. On February 3, 2009, Radford, in Washington, e-mailed to  
24 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot  
25 spreadsheet containing confidential information about Straitshot’s network for Straitshot customer  
26

1 DuCharme McMillen and asked Salazar to prepare a Telekenex contract for the services outlined  
2 in the Straitshot spreadsheet.

3 174. February 3, 2009. On February 3, 2009, using stolen confidential Straitshot  
4 customer information, Radford, in Washington, e-mailed to Straitshot customer DuCharme  
5 McMillen, in Indiana, the proposed Telekenex contract.

6 175. February 3, 2009. On February 3, 2009, using stolen confidential Straitshot  
7 customer information, Bani and Salazar, in California, and Prudell and Radford, in Washington,  
8 spoke by telephone with Straitshot customer Norco, in Idaho, and falsely informed Norco that  
9 Straitshot was going out of business and solicited Norco to abandon its contract with Straitshot  
10 and execute a services contract with Telekenex at the same prices Straitshot was charging Norco.

11 176. February 3, 2009. On February 3, 2009, Straitshot customer KBZ reported to  
12 Straitshot as follows:

13 It has been a very unsettling week which began with a call from a  
14 representative of Telekenex stating that he was working at the  
15 behest of Covad (and other carrier [sic]) to pick up the pieces of a  
16 defaulted Straitshot and that our circuits could be shut down at any  
17 time as Straitshot was significantly behind in payments to carriers.  
18 .... They knew our current Straitshot rates and offered to put me in  
19 touch with “former Straitshot employees” that had come to  
20 Telekenex in the wake of Straitshot’s “impending dissolution” (not  
21 an exact quote).

22 177. February 3, 2009. On February 3, 2009, Straitshot customer Vinculum  
23 Communications reported to Straitshot as follows:

24 I did receive a contact from Benjamin Jones  
25 [bjones@telekenex.com].... He contacted me stating that they had  
26 purchase [sic] all of your circuits and were going to take over  
services and would still honor the Straitshot price (but we had to  
sign a 3 year extension deal).... I have started looking around to  
move the circuits because of the notification that Straitshot is going  
out of business. Benjamin did offer for me to speak with Mark  
Radford (our old sales rep from Straitshot) if I needed verification  
that Straitshot was out of business.

1           178. February 3, 2009. On February 3, 2009, Straitshot agent Jae Sin reported to  
2 Straitshot as follows: “People from Telekenex are calling our customers stating that you are  
3 shutting them off next week Friday and that they can do a[n] internal core routing changes [sic]  
4 without changing out the local loop.” Mr. Sin was particularly concerned about the possibility  
5 that unauthorized individuals could execute “internal core routing changes,” as such  
6 modifications involve a process whereby the destination of customer data travelling over the  
7 network can be changed. Such changes would also be required to move a network endpoint to a  
8 different carrier network core, as in Defendants’ schemes to move customers from Straitshot’s  
9 network to Telekenex’s network. Absent Straitshot’s explicit authorization and direction –  
10 Straitshot being the one in control of the highly confidential information regarding the Straitshot  
11 network’s endpoints – this type of change could not occur without the cooperation of an  
12 unscrupulous carrier and the use by Telekenex of confidential Straitshot customer information  
13 provided by Prudell, Radford, Summers, and Worthen to breach the security of Straitshot’s  
14 network configuration.

15           179. February 3, 2009. On February 3, 2009, Radford, in Washington, e-mailed to  
16 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot  
17 spreadsheet containing confidential information about Straitshot’s network for Straitshot customer  
18 Perry Ford and asked Salazar to prepare a Telekenex contract for the services outlined in the  
19 Straitshot spreadsheet.

20           180. February 3, 2009. On or about February 3, 2009, using stolen confidential  
21 Straitshot customer information, a Telekenex salesperson called Straitshot customer Miller, Inc.  
22 and falsely told Miller Inc. that Straitshot was going out of business and that Miller, Inc.’s network  
23 would be disconnected within one week unless Miller, Inc. signed up with Telekenex.

24           181. February 3, 2009. On February 3, 2009, Radford, in Washington, e-mailed to  
25 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot  
26 spreadsheet containing confidential information about Straitshot’s network for Straitshot customer

1 Vision Express and asked Salazar to prepare a Telekenex contract for the services outlined in the  
2 Straitshot spreadsheet.

3 182. February 3, 2009. On February 3, 2009, Radford, in Washington, e-mailed to  
4 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot  
5 spreadsheet containing confidential information about Straitshot's network for Straitshot customer  
6 MOR Furniture and asked Salazar to prepare a Telekenex contract for the services outlined in the  
7 Straitshot spreadsheet.

8 183. February 3, 2009. On February 3, 2009, Radford, in Washington, e-mailed to  
9 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot  
10 spreadsheet containing confidential information about Straitshot's network for Straitshot customer  
11 Howard S. Wright and asked Salazar to prepare a Telekenex contract for the services outlined in  
12 the Straitshot spreadsheet.

13 184. February 4, 2009. On February 4, 2009, Radford, in Washington, e-mailed to  
14 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot  
15 spreadsheet containing confidential information about Straitshot's network for Straitshot customer  
16 Security RM and asked Salazar to prepare a Telekenex contract for the services outlined in the  
17 Straitshot spreadsheet.

18 185. February 4, 2009. On February 4, 2009, using stolen confidential Straitshot  
19 customer information, Radford e-mailed the agent for Straitshot customer Stellar Recovery/ARS  
20 and stated: "As mentioned, we can simply re-point the traffic for customer, ARS, ensuring the  
21 least amount of down time possible. We will not need to re-provision loops or need to role a  
22 truck. Telekenex will honor all the existing SS [Straitshot] pricing." The reference to "re-  
23 point[ing] the traffic" describes a process whereby the destination of network endpoints are shifted  
24 to a different carrier network core, as in Defendants' schemes to move customers from  
25 Straitshot's network to Telekenex's network. Absent Straitshot's explicit authorization and  
26 direction— Straitshot being the one in control of the highly confidential information regarding the

1 Straitshot network's endpoints – this type of change could not occur without the cooperation of an  
2 unscrupulous carrier and the use by Telekenex of Straitshot's confidential customer information  
3 provided by Prudell, Radford, Summers, and Worthen to breach the security of Straitshot's  
4 network configuration.

5 186. February 4, 2009. On February 4, 2009, using stolen confidential Straitshot  
6 customer information, Prudell, in Washington, called Straitshot customer DuCharme McMillen, in  
7 Indiana, and falsely stated that Straitshot was going out of business and solicited DuCharme  
8 McMillen to abandon its contract with Straitshot and sign on with Telekenex at the same prices  
9 Straitshot was charging DuCharme McMillen.

10 187. February 5, 2009. On February 5, 2009, using stolen confidential Straitshot  
11 customer information, Radford, in Washington, called Straitshot customer Nexus IS, in California,  
12 and left a voicemail message falsely stating that Straitshot was going out of business and soliciting  
13 Nexus IS to abandon its contract with Straitshot and execute a services contract with Telekenex at  
14 the same prices Straitshot was charging Nexus IS.

15 188. February 5, 2009. On February 5, 2009, using stolen confidential Straitshot  
16 customer information, Radford and Prudell, in Washington, and Bani, in California, spoke by  
17 telephone with Straitshot customer DuCharme McMillen and falsely stated that Straitshot was  
18 going out of business and solicited DuCharme McMillen to abandon its contract with Straitshot  
19 and sign on with Telekenex at the same prices Straitshot was charging DuCharme McMillen.

20 189. February 5, 2009. On February 5, 2009, Radford, in Washington, e-mailed to  
21 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot  
22 spreadsheet containing confidential information about Straitshot's network for Straitshot customer  
23 IPiphany and asked Salazar to prepare a Telekenex contract for the services outlined in the  
24 Straitshot spreadsheet.

25 190. February 5, 2009. On February 5, 2009, using stolen confidential Straitshot  
26 customer information, Prudell and Radford, in Washington, and Bani, in California, spoke by

1 telephone with Straitshot customer Mega Hertz, in Colorado, and falsely stated that Straitshot was  
2 going out of business and solicited Mega Hertz to abandon its contract with Straitshot and sign on  
3 with Telekenex at the same prices Straitshot was charging Mega Hertz.

4 191. February 5, 2009. On February 5, 2009, using stolen confidential Straitshot  
5 customer information, Radford, in Washington, e-mailed to Straitshot customer DuCharme  
6 McMillen, in Indiana, the proposed Telekenex contract.

7 192. February 5, 2009. On February 5, 2009, using stolen confidential Straitshot  
8 customer information, Prudell called Straitshot customer Lake Washington Vascular and falsely  
9 stated that Straitshot was going out of business and solicited Lake Washington Vascular to  
10 abandon its contract with Straitshot and sign on with Telekenex at the same prices Straitshot was  
11 charging Lake Washington Vascular.

12 193. February 5, 2009. On February 5, 2009, Radford, in Washington, e-mailed to  
13 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot  
14 spreadsheet containing confidential information about Straitshot's network for Straitshot customer  
15 Lake Washington Vascular and asked Salazar to prepare a Telekenex contract for the services  
16 outlined in the Straitshot spreadsheet.

17 194. February 5, 2009. On February 5, 2009, while Summers was a Straitshot  
18 employee, Telekenex's Director of IP Infrastructure, Charles Hampton, e-mailed to Zabit,  
19 Summers, and other Telekenex engineers that Summers would be accessing Straitshot's routers,  
20 requiring use of Straitshot's confidential passwords and log on protocols, to move Straitshot  
21 customer Evergreen's network from Straitshot's network to Telekenex's network. While he was a  
22 Straitshot employee, Summers completed the unauthorized reconfiguration described by Hampton.

23 195. February 5, 2009. On February 5, 2009, while he was a Straitshot employee,  
24 Summers e-mailed to Zabit, in California, and Prudell, in Washington, stolen confidential  
25 Straitshot customer information about Straitshot customer Evergreen that Summers obtained from  
26 Straitshot's CRM database.

1           196. Entry of TRO. On February 5, 2009, the King County Superior Court entered a  
2 TRO against Prudell, Radford and Telekenex prohibiting them from:

3                   (1) using in any way Straitshot's trade secrets and confidential  
4 information, including without limitation, information about  
5 Straitshot's customers and its network; (2) Communicating in any  
6 way with anyone known by Defendants to be a Straitshot customer,  
7 vendor, partner or agent of a Straitshot customer; and (3) Making  
8 any statement about the status of Straitshot's business.

9           197. February 6, 2009. On February 6, 2009, Summers advised Straitshot that he would  
10 not be doing any more work for Straitshot and that he was relinquishing that day access to  
11 Straitshot's confidential passwords.

12           198. February 2009. In early February 2009, without permission from Straitshot and  
13 while he was a Straitshot employee, Summers repeatedly logged on to Straitshot's routers, using  
14 Straitshot's confidential password and log on protocols, to obtain information regarding  
15 Straitshot's customer circuits for use in moving Straitshot customers to Telekenex's network.  
16 Summers supplied to Telekenex engineers Straitshot's confidential password and log on protocols  
17 which they used to obtain information regarding Straitshot's customer circuits for use in moving  
18 Straitshot customers to Telekenex's network. After February 6, 2009, Summers, on behalf of  
19 Telekenex, repeatedly logged on to Straitshot's routers, using Straitshot's confidential password  
20 and log on protocols, to make the changes on Straitshot's network necessary for Defendants to  
21 accomplish their scheme of moving Straitshot's customers to Telekenex's network without  
22 Straitshot's knowledge or consent.

23           199. February 6, 2009. On February 6, 2009, in direct violation of the TRO, Summers,  
24 in California, sent an instant message to Worthen, in Wyoming, requesting that Mammoth  
25 maintain Straitshot customers on Straitshot's routers while Summers completed the engineering  
26 work necessary to move Straitshot customers to Telekenex's network. While Mammoth was  
under contract with Straitshot and without notifying Straitshot, Worthen responded that Mammoth  
would do so.

1           200. February 6-7, 2009. While Mammoth was under contract with Straitshot and in  
2 direct violation of the TRO, Zabit traveled from California to Wyoming and back on February 6-7,  
3 2009 to meet with Worthen and the Mammoth Board of Directors at Mammoth's offices in  
4 Wyoming. Zabit presented to Worthen and the Mammoth Board a proposal for Mammoth to  
5 move all of Straitshot's customers to Telekenex's network without Straitshot's consent in  
6 exchange for Telekenex committing to purchase a high volume of circuits from Mammoth.

7           201. February 7, 2009. On February 7, 2009, using stolen confidential Straitshot  
8 customer information and in direct violation of the TRO, Telekenex salesman Tim Healy, in  
9 California, e-mailed to Straitshot customer Mega Hertz, in Colorado, the proposed Telekenex  
10 contract.

11           202. February 9, 2009. On February 9, 2009, using stolen confidential Straitshot  
12 customer information and in direct violation of the TRO, Zabit, Bani and Salazar, in California,  
13 and Prudell and Radford, in Washington, spoke by telephone regarding soliciting Straitshot's  
14 customers to abandon their contracts with Straitshot and sign on with Telekenex at the same prices  
15 Straitshot was charging the customers.

16           203. February 9, 2009. On February 9, 2009, in direct violation of the TRO, Radford, in  
17 Washington, e-mailed to Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a  
18 stolen Straitshot spreadsheet containing confidential information about Straitshot's network for  
19 Straitshot customer RGL Forensics and asked Salazar to prepare a Telekenex contract for the  
20 services outlined in the Straitshot spreadsheet.

21           204. February 9, 2009. On February 9, 2009, in direct violation of the TRO, Summers,  
22 using stolen Straitshot's confidential password and log on protocols, accessed Straitshot's router  
23 and disabled the network for Straitshot customer Norco and caused the network to cease  
24 functioning.

1           205. February 10, 2009. On multiple occasions on February 10, 2009, Telekenex,  
2 without authorization from Straitshot and in direct violation of the TRO, used Straitshot's  
3 confidential passwords and protocols, obtained from Summers, to log in to Straitshot's routers.

4           206. February 10, 2009. On February 10, 2009, using confidential Straitshot customer  
5 information and in direct violation of the TRO, Radford e-mailed to Straitshot customer Lake  
6 Washington Vascular the proposed Telekenex contract and requested that Lake Washington  
7 Vascular call Telekenex to discuss the same.

8           207. February 10, 2009. On February 10, 2009, in direct violation of the TRO, Radford,  
9 in Washington, e-mailed to Salazar, Chaney and Zabit, in California, and Prudell, in Washington,  
10 a stolen Straitshot spreadsheet containing confidential information about Straitshot's network for  
11 Straitshot customer Easy Care and asked Salazar to prepare a Telekenex contract for the services  
12 outlined in the Straitshot spreadsheet.

13           208. February 10, 2009. On February 10, 2009, using confidential Straitshot customer  
14 information and in direct violation of the TRO, Bani, in California, spoke by telephone with  
15 Straitshot customer A-Dec, in Oregon, and falsely stated that Straitshot was going out of business  
16 and solicited A-Dec to abandon its contract with Straitshot and sign on with Telekenex at the same  
17 prices Straitshot was charging A-Dec.

18           209. February 11, 2009. On February 11, 2009, while Mammoth was under contract  
19 with Straitshot and in direct violation of the TRO, Zabit, in California, e-mailed to Worthen, in  
20 Wyoming, executed service orders authorizing Mammoth to make the connections to Telekenex's  
21 network for use in moving the Straitshot customers to Telekenex.

22           210. February 11, 2009. On February 11, 2009, using stolen confidential Straitshot  
23 customer information and in direct violation of the TRO, Bani, Salazar, and Ciniero, in California,  
24 and Prudell and Radford, in Washington, spoke by telephone with Straitshot customer Steen, in  
25 Pennsylvania, and falsely stated that Straitshot was going out of business and discussed moving  
26 Steen from Straitshot's network to Telekenex's network.

1           211. February 11, 2009. On February 11, 2009, in direct violation of the TRO, Radford,  
2 in Washington, e-mailed to Salazar, Chaney and Zabit, in California, and Prudell, in Washington,  
3 a stolen Straitshot spreadsheet containing confidential information about Straitshot's network for  
4 Straitshot customer RW Smith and asked Salazar to prepare a Telekenex contract for the services  
5 outlined in the Straitshot spreadsheet.

6           212. February 11, 2009. On February 11, 2009, using stolen confidential Straitshot  
7 customer information and in direct violation of the TRO, Bani, in California, and Summers,  
8 Prudell, and Radford, in Washington, spoke by telephone with Straitshot customer A-Dec, in  
9 Oregon, and falsely stated that Straitshot was going out of business and solicited A-Dec to  
10 abandon its contract with Straitshot and execute a services contract with Telekenex at the same  
11 prices Straitshot was charging A-Dec.

12           213. February 12, 2009. On February 12, 2009, using stolen confidential Straitshot  
13 customer information and in direct violation of the TRO, Prudell spoke by telephone with  
14 Straitshot customer Boys and Girls Club and falsely stated that Straitshot was going out of  
15 business and solicited Boys and Girls Club to abandon its contract with Straitshot and execute a  
16 services contract with Telekenex at the same prices Straitshot was charging Boys and Girls Club.  
17 In an attempt to keep hidden his violation of the TRO and his continuing role in Defendants'  
18 unlawful schemes, Prudell followed the call with an e-mail asking that Boys and Girls Club  
19 "Please keep me off [Straitshot CEO] Andrew [Gold]'s Radar and I will give the Boys and Girls  
20 Club some great options."

21           214. February 12, 2009. On February 12, 2009, in direct violation of the TRO, Holst, in  
22 California, e-mailed to Radford, in Washington, and requested that for all of the contracts  
23 Telekenex had executed with Straitshot customers: "I need customer contact information, today if  
24 possible, if not, as early tomorrow as possible. Anthony [Zabit] wants my team to contact all the  
25 [former Straitshot] customers tomorrow and obtain Inside Wire information, as well as give them  
26

1 updates on their cut over into our systems.” In direct violation of the TRO, Radford supplied the  
2 requested stolen confidential Straitshot customer information to Holst.

3 215. February 13, 2009. On February 13, 2009, using stolen confidential Straitshot  
4 customer information and in direct violation of the TRO, Radford spoke by telephone with  
5 Straitshot customer MacKay & Sposito and falsely stated that Straitshot was going out of business  
6 and solicited MacKay & Sposito to abandon its contract with Straitshot and execute a services  
7 contract with Telekenex at the same prices Straitshot was charging MacKay & Sposito.

8 216. February 13, 2009. On February 13, 2009, using stolen confidential Straitshot  
9 customer information and in direct violation of the TRO, Radford, in Washington, spoke by  
10 telephone with Straitshot customer Chicago Apartment Finders, in Illinois, and falsely stated that  
11 Straitshot was going out of business and solicited Chicago Apartment Finders to abandon its  
12 contract with Straitshot and execute a services contract with Telekenex at the same prices  
13 Straitshot was charging Chicago Apartment Finders.

14 217. February 17, 2009. On February 17, 2009, using stolen confidential Straitshot  
15 customer information and in direct violation of the TRO, Zabit and Bani, in California, and  
16 Prudell and Radford, in Washington, spoke by telephone with Straitshot customer DuCharme  
17 McMillen, in Indiana, and solicited DuCharme McMillen to abandon its contract with Straitshot  
18 and sign on with Telekenex at the same prices Straitshot was charging DuCharme McMillen.

19 218. Mammoth Terminates Services to Straitshot. On February 17, 2009, Mammoth cut  
20 off Straitshot’s circuits in an effort to extort a premature cash payment from Straitshot contrary to  
21 the Deferral Agreement. This caused the networks of Straitshot’s customers to go down and  
22 caused damages and distress to those customers and to Straitshot.

23 219. February 18, 2009. On February 18, 2009, while Mammoth was under contract  
24 with Straitshot and in direct violation of the TRO, Prudell, in Washington, sent an instant message  
25 to Worthen, in Wyoming, stating: “we would like to send \$ to you & have a deal done.”  
26

1           220. February 18, 2009. On February 18, 2009, while Mammoth was under contract  
2 with Straitshot, Worthen, in Wyoming, sent an instant message to Summers, in Washington,  
3 advising that the cross-connect between Telekenex's network and Mammoth's network was  
4 complete.

5           221. Amended TRO. On February 18, 2009, the King County Superior Court amended  
6 the TRO to prohibit Prudell, Radford and Telekenex from: "(1) using in any way Straitshot's  
7 trade secrets and confidential information, including without limitation, information about  
8 Straitshot's customers and its network; (2) Communicating in any way with anyone known by  
9 Defendants to be a Straitshot customer, vendor, partner or agent of a Straitshot customer" except  
10 that Defendants were permitted to communicate with 15 specified customers with whom Prudell  
11 and Radford alleged they had substantial customer relationships prior to their employment with  
12 Straitshot; "and (3) Making any disparaging statement about the status of Straitshot's business."

13           222. February 19, 2009. On February 19, 2009, former Straitshot engineer Sunil Modi,  
14 now employed by Telekenex, provided to Telekenex in direct violation of the Amended TRO the  
15 stolen confidential and proprietary Internet Protocol addresses belonging to Straitshot that had  
16 been used by Straitshot to create a network for Straitshot customer The Ram. In direct violation of  
17 the Amended TRO, Telekenex and Mammoth used this information to move The Ram from  
18 Straitshot's network to Telekenex's network without Straitshot's approval.

19           223. February 19, 2009. On February 19, 2009, while Mammoth was under contract  
20 with Straitshot, Worthen, in Wyoming, e-mailed Prudell, in Washington, instructing Telekenex to  
21 send over Telekenex contracts signed by the former Straitshot customers. "I can redirect to you  
22 any time once I have that. We will then send you agreements for all the [Straitshot] circuits you  
23 are assuming control of."

24           224. February 19, 2009. On February 19, 2009, using stolen confidential Straitshot  
25 customer information, while Mammoth remained under contract with Straitshot, and in direct  
26 violation of the Amended TRO, Chaney, in California, e-mailed to Worthen, in Wyoming,

1 Telekenex contracts signed by the Straitshot customers. “Attached are signed contracts for the  
2 following companies: Velocity Express, Evergreen Healthcare, Puget Sound Gas, RAM  
3 Restaurants, US Bearings, Miller Inc. We expect to be sending over the following contracts later  
4 today or tomorrow morning as well: Presidential Pools, Shred IT, Boys and Girls Club.”

5 225. February 19, 2009. On February 19, 2009, while Mammoth remained under  
6 contract with Straitshot, Worthen, in Wyoming, e-mailed to Chaney, in California: “Nicely done.  
7 I’ll await your direction to either (1) leave live to the Straitshot router or (2) repoint to your router.  
8 As far as I’m concerned, you are in the driver’s seat for the first 6 End Users as of 6:00 pm  
9 Mountain 2/19/09.” Worthen had no authorization from Straitshot to, and did not inform  
10 Straitshot regarding his, offer to put Telekenex in the “driver’s seat” of Straitshot’s router.

11 226. February 19, 2009. On February 19, 2009, Radford, in Washington, in direct  
12 violation of the Amended TRO, e-mailed to Salazar, Chaney, Zabit, Ciniero, and Bani, in  
13 California, and Prudell, in Washington, a stolen Straitshot spreadsheet containing confidential  
14 information about Straitshot’s network for Straitshot customer Organic to Go and asked Salazar to  
15 prepare a Telekenex contract for the services outlined in the Straitshot spreadsheet.

16 227. February 20, 2009. Mammoth terminated its contract with Straitshot on February  
17 20, 2009.

18 228. February 20, 2009. On February 20, 2009, using stolen confidential Straitshot  
19 customer information and in direct violation of the Amended TRO, Radford and Prudell, in  
20 Washington, and Zabit and Bani, in California, spoke by telephone with Straitshot customer Steen,  
21 in Pennsylvania, and solicited Steen to abandon its contract with Straitshot and sign on with  
22 Telekenex at the same prices Straitshot was charging Steen.

23 229. February 20, 2009. On February 20, 2009, using stolen confidential Straitshot  
24 customer information and in direct violation of the Amended TRO, Radford and Prudell, in  
25 Washington, and Bani, in California, spoke by telephone with Straitshot customer Pacific Housing  
26 Advisors and solicited Pacific Housing Advisors to abandon its contract with Straitshot and sign

1 on with Telekenex at the same prices Straitshot was charging Pacific Housing Advisors. Pacific  
2 Housing Advisors was not among the Straitshot customers excepted from the Amended TRO's  
3 prohibition on contact.

4 230. February 20, 2009. On February 20, 2009, using stolen confidential Straitshot  
5 customer information and in direct violation of the Amended TRO, Telekenex salesman Tim  
6 Healy, in California, called Straitshot customer Sound Sleep Health, in Washington, and informed  
7 Sound Sleep Health that Telekenex had gotten the contact information for Sound Sleep Health  
8 from a list of Straitshot customers and he solicited Sound Sleep Health to abandon its contract  
9 with Straitshot and sign on with Telekenex. Sound Sleep Health was not among the Straitshot  
10 customers excepted from the Amended TRO's prohibition on contract.

11 231. February 20, 2009. On February 20, 2009, using stolen confidential Straitshot  
12 customer information and in direct violation of the Amended TRO, Telekenex salesman Oscar  
13 Molnar, in California, called Straitshot customer EWS, in Idaho, and solicited EWS to abandon its  
14 contract with Straitshot and sign on with Telekenex. EWS was not among the Straitshot  
15 customers excepted from the Amended TRO's prohibition on contact.

16 232. February 20, 2009. On February 20, 2009, using stolen confidential Straitshot  
17 customer information in direct violation of the Amended TRO, Telekenex salesman Tim Healy, in  
18 California, e-mailed Straitshot customer Sound Sleep Health, in Washington, and stated:

19 As you are aware, there are serious issues at Straitshot  
20 Communications and many of their customers are in danger of being  
21 turned off, if they haven't already. We have entered into agreements  
22 with Mammoth Networks who provides a number of services to  
23 vendors such as Straitshot to offer the same services with minimal,  
24 or no downtime. All key Straitshot employees, including their  
25 engineers and technicians, are now employed at Telekenex. This  
26 allows us to seamlessly transition current Straightshot [sic]  
customers to the Telekenex network. I am working on getting you  
the proper paperwork to you [sic], so we may get Sound Health [sic]  
migrated over as soon as possible.

Sound Sleep Health was not among the Straitshot customers excepted from the Amended TRO's  
prohibition on contact.

1           233. February 20, 2009. On February 20, 2009, using stolen confidential Straitshot  
2 customer information and in direct violation of the Amended TRO, Radford e-mailed Straitshot  
3 customer Organics to Go a proposed Telekenex contract to replace Straitshot's services and that  
4 "[a]ll services and prices remain the same as today.... As soon as you can get me this back the  
5 better so I can get you in the que [sic] with Josh [Summers] and team and a project manager  
6 assigned." Organics to Go was not among the Straitshot customers excepted from the Amended  
7 TRO's prohibition on contact.

8           234. February 20, 2009. On February 20, 2009, in direct violation of the Amended  
9 TRO, Summers, in Washington, e-mailed to Mammoth engineer Jeremy Mali, in Wyoming,  
10 Straitshot's stolen confidential information about the mapping of Straitshot's customer routes for  
11 Mammoth's use in moving Straitshot's customers to Telekenex's network.

12           235. February 23, 2009. On February 23, 2009, using stolen confidential Straitshot  
13 customer information and in direct violation of the Amended TRO, Radford, in Washington, and  
14 Bani, in California, spoke by telephone with Straitshot customer Easy Staffing, in Arizona, and  
15 solicited Easy Staffing to sign on with Telekenex at the same prices Straitshot was charging Easy  
16 Staffing. Easy Staffing was not among the Straitshot customers excepted from the Amended  
17 TRO's prohibition on contact.

18           236. February 24, 2009. On February 24, 2009, using stolen confidential Straitshot  
19 customer information and in direct violation of the Amended TRO, a Telekenex salesperson called  
20 Straitshot customer Volunteers of America and solicited Volunteers of America to sign on with  
21 Telekenex at the same prices Straitshot was charging Volunteers of America. Volunteers of  
22 America was not among the Straitshot customers excepted from the Amended TRO's prohibition  
23 on contact.

24           237. February 27, 2009. On February 27, 2009, using stolen confidential Straitshot  
25 customer information and in direct violation of the Amended TRO, Prudell e-mailed Straitshot  
26 customer Boys and Girls Club and solicited Boys and Girls Club to sign on with Telekenex. Boys

1 and Girls Club was not among the Straitshot customers excepted from the Amended TRO's  
2 prohibition on contact.

3 238. February 27, 2009. On February 27, 2009, using stolen confidential Straitshot  
4 customer information and in direct violation of the Amended TRO, Radford, Prudell and  
5 Summers, in Washington, and Ciniero, in California, spoke by telephone with Straitshot customer  
6 Pacific Housing Advisors, in Washington, regarding moving Pacific Housing Advisors from  
7 Straitshot's network to Telekenex's network. Pacific Housing Advisors was not among the  
8 Straitshot customers excepted from the Amended TRO's prohibition on contact.

9 MARCH 2009

10 239. March 2, 2009. On March 2, 2009, using stolen confidential Straitshot customer  
11 information and in direct violation of the Amended TRO, Radford, in Washington, e-mailed  
12 Rogers Machinery, in Oregon, and solicited Rogers Machinery to move from Straitshot's network  
13 to Telekenex's network. Rogers Machinery was not among the Straitshot customers excepted  
14 from the Amended TRO's prohibition on contact.

15 240. March 2, 2009. On March 2, 2009, using stolen confidential Straitshot customer  
16 information and in direct violation of the Amended TRO, Prudell called Organics to Go and  
17 solicited Organics to Go to move from Straitshot's network to Telekenex's network. Organics to  
18 Go was not among the Straitshot customers excepted from the Amended TRO's prohibition on  
19 contact.

20 241. March 2, 2009. On March 2, 2009, using stolen confidential Straitshot customer  
21 information and in direct violation of the Amended TRO, Prudell e-mailed Lake Washington  
22 Vascular and solicited Lake Washington Vascular to move from Straitshot's network to  
23 Telekenex's network. Lake Washington Vascular was not among the Straitshot customers  
24 excepted from the Amended TRO's prohibition on contact.

25 242. March 3, 2009. On March 3, 2009, using stolen confidential Straitshot customer  
26 information and in direct violation of the Amended TRO, Prudell, in Washington, e-mailed Rogers

1 Machinery, in Oregon, and solicited Rogers Machinery to move from Straitshot's network to  
2 Telekenex's network. Rogers Machinery was not among the Straitshot customers excepted from  
3 the Amended TRO's prohibition on contact.

4 243. March 4, 2009. On March 4, 2009, using stolen confidential Straitshot customer  
5 information and in direct violation of the Amended TRO, Prudell and Radford, in Washington,  
6 and Bani, in California, spoke by telephone with Organics to Go and solicited Organics to Go to  
7 move from Straitshot's network to Telekenex's network. Organics to Go was not among the  
8 Straitshot customers excepted from the Amended TRO's prohibition on contact.

9 244. March 12, 2009. On March 12, 2009, using stolen confidential Straitshot customer  
10 information and in direct violation of the Amended TRO, Prudell e-mailed Boys and Girls Club  
11 and solicited Boys and Girls Club to move to Telekenex's network. Boys and Girls Club was not  
12 among the Straitshot customers excepted from the Amended TRO's prohibition on contact.

13 245. March 13, 2009. On March 13, 2009, using stolen confidential Straitshot customer  
14 information and in direct violation of the Amended TRO, Summers, Prudell and Radford, in  
15 Washington, spoke by telephone with Zabit and Ciniero, in California, to plan the solicitation of  
16 Pacific Housing Advisors to move to Telekenex's network. Pacific Housing Advisors was not  
17 among the Straitshot customers excepted from the Amended TRO's prohibition on contact.

18 246. March 23, 2009. On March 23, 2009, using stolen confidential Straitshot customer  
19 information, Prudell e-mailed Boys and Girls Club and solicited Boys and Girls Club to move to  
20 Telekenex's network.

21 APRIL 2009 AND BEYOND

22 247. Even after Straitshot terminated its service, Defendants continued to solicit former  
23 Straitshot customers using confidential and proprietary business information from Straitshot. For  
24 example, on April 6, 2009, Mark Radford emailed U.S. Bearings, a former Straitshot customer,  
25 seeking to solicit its business. In May 2009, Zabit and either Prudell or Radford solicited U.S.  
26 Bearings to purchase Voice over Internet Protocol (VoIP) service from Telekenex. At the time,

1 Defendants were in possession of confidential proprietary information from Straitshot regarding  
2 U.S. Bearings and used that information to solicit business from U.S. Bearings.

3 248. On September 10, 2009, Lorenzo Henderson of Telekenex e-mailed Puget Sound  
4 Gastroenterology, a former Straitshot customer, to solicit its business using confidential Straitshot  
5 business information: “our records indicate the original CPE at this site was sold through  
6 Straitshot and is out of warranty. I am working on getting pricing for replacement CPE ASAP.”

7 249. On December 10, 2009, Tom Hunsinger of Telekenex e-mailed Greg Bronemann  
8 of Howard S Wright, a former Straitshot customer, and solicited Howard S. Wright’s business  
9 using confidential Straitshot business information: “Happy Holidays! I wanted to reach out and  
10 introduce Telekenex. We are a national provider of voice and data solutions and wanted to see if  
11 there are technology initiatives underway that we could participate in? We provide MPLS WAN,  
12 Internet Access, Universal Threat Protection, and hosted Cisco Telephony. Are you in the market  
13 for any these types of services? Our customers include 7UP, Disney, The Oakland Raiders,  
14 Gymboree, Evergreen Healthcare and many more. Please visit our website at www.telekenex.com  
15 and give me a call at 972-535-7752.”

16 SUMMERS’ OBSTRUCTION OF JUSTICE

17 250. Defendant Summers made a long series of false statements to cover up Defendants’  
18 wrongdoing. On February 7, 2009, Summers sent Straitshot CEO Andrew Gold an email at 12:33  
19 p.m. stating: “The only property of Straitshot that I retain is access to the network which, after this  
20 email, I will have terminated entirely.” In fact, that was untrue, as he still maintained *at least* the  
21 Straitshot laptop.

22 251. On February 11, 2009, Straitshot CFO Phil Howe sent Summers an instant message  
23 instructing him to return all Straitshot equipment and property in his possession. According to  
24 Howe: “I told him that we needed to get all the Straitshot equipment and property back that he  
25 had at his apartment. That night we met up at the Bel Red Storage facility at about 8:00PM. He  
26 had rented a van. He told me that he had ‘all the stuff from my apartment.’ The items consisted

1 of about 10 flat panel monitors, 4 loose computers ‘CPUS’ and assorted routers returned from  
2 customers and other boxes and equipment. Near the end of the unloading I asked him if the loose  
3 computers were all the computers he had. He said yes. I asked him where Ashlie Young’s  
4 computer was. He told me that it and all other unused computers were in the downtown storage  
5 locker. I did not specifically ask him about his Dell M-series laptop computer.” The “Dell  
6 M-series laptop computer” Mr. Howe mentions refers to the primary computer Summers used as  
7 Straitshot’s Director of Engineering (the “Summers Straitshot Laptop”).

8         252. On February 13, after the Second Temporary Restraining Order was served on him,  
9 Summers called Howe to say that the Summers Straitshot Laptop was in the Bel-Red storage  
10 locker. According to Howe, “I told him that I had not seen it and that we had not talked about it  
11 specifically. He then said it must have been in a box. I told him that I would go back and check  
12 the locker to be sure.” Howe later checked and could not find the Summers Straitshot Laptop in  
13 question.

14         253. On February 16, Summers filed a declaration stating under oath: “On February 12,  
15 2009, I met with Straitshot CFO Phil Howe and provided him with all the hardware that former  
16 Straitshot employees had in their possession, including the laptop Mr. Gold claims is still in my  
17 possession [referring to the Summers Straitshot Laptop].” That declaration was false and was  
18 intended to obstruct the then pending state-court proceeding.

19         254. In fact, Summers was continuing to use the Summers Straitshot Laptop. On  
20 February 14, Summers connected the Summers Straitshot Laptop to a CD-ROM containing the  
21 file “Engineering Contacts.” On February 16, the same day he swore under oath that the Summers  
22 Straitshot Laptop had been returned, Summers loaded a new operating system - Microsoft  
23 Windows Vista - over the existing operating system on the computer (Windows XP). Plaintiff’s  
24 expert Erik Laykin has opined that the installation of Windows Vista was “highly unusual” in light  
25 of the pending litigation, and he could not offer “a valid or compelling technical reason for the  
26 installation.” Laykin added: “However, I have observed that technically sophisticated users who

1 wish to wipe or delete as much information as possible on a computer without using a wiping  
2 software utility (which will leave a pattern or signature on the hard drive) may instead install a  
3 new operating system knowing that the net result will be the overwriting of significant portions of  
4 the unallocated space on the hard drive further removing the possibility of reconstructing  
5 overwritten files.” Summers’ loading of a new operating system on the Summers Straitshot  
6 Laptop was intended to obstruct the pending state-court proceeding.

7 255. Also on the same day he swore the Summers Straitshot Laptop had been returned,  
8 Summers used the Mozilla Firefox web browser software on the laptop - at 3:05:30 p.m. and then  
9 again at 5:42:43 p.m.

10 256. On February 17, Summers created a new folder, labeled “Telekenex,” on the  
11 Summers Straitshot Laptop, and placed 28 files in it. The folder included files containing  
12 confidential Straitshot business information, as well as files relating to Defendants’ scheme for  
13 moving Straitshot customers to Telekenex, including files with the titles “Carrier Mappings,”  
14 “Transition Plan,” and “Telekenex Transition Team Script.”

15 257. That same day – February 17, 2009 – Phil Howe sent Summers an email at  
16 3:22 p.m. stating: “I didn’t find it [the Summers Straitshot Laptop] in the boxes that you delivered  
17 to the storage unit.”

18 258. At 7:16 p.m., Summers responded: “Was everything else there? If so, I will check  
19 around to make sure it didn’t get missed from my house.”

20 259. At 7:39 p.m., Howe replied to Summers: “All I found were those three that were  
21 together (one without the keys – Toms – one without the battery – one that when booted up said  
22 test). I looked in all the boxes. I have the little one that was Andrews.”

23 260. Summers nevertheless still failed to return the Summers Straitshot Laptop.

24 261. The next day, on February 18, Straitshot obtained another state-court TRO (the  
25 “Amended 2nd TRO”) “requiring Summers to make a diligent search for and produce the  
26 Straitshot laptop in his possession.... Defendants are on notice that strict compliance with this

1 Order is required. If evidence of tempering or altering of property subject to this Order is found or  
2 observed by Plaintiff in the course of discovery in this matter, the Court will impose monetary  
3 sanctions and impose adverse evidentiary inference sanctions based upon spoliation of evidence.”

4 262. Summers still failed to return the Summers Straitshot Laptop. In fact, on  
5 February 19, one day after the Amended 2nd TRO was served on Summers, he deleted 10 Excel  
6 files on the laptop. On February 24, he ran a program, known as “RegEdit,” designed to delete  
7 data on the computer. Laykin found that this operation “permanently destroyed or modified all  
8 records and evidence of external devices (hard drives, thumb drives, etc) attached to the computer,  
9 records of deleted files and numerous other user-induced activity.” The deletion of files and  
10 running of the RegEdit program were intended to obstruct the pending state-court proceeding.

11 263. On February 28, Summers used the Summers Straitshot Laptop to connect to an  
12 outside network containing a folder labeled “Strait Shot Transitions.” On March 2, he created a  
13 file in the “Telekenex” folder on the Summers Straitshot Laptop named “Customer Issues.” On  
14 March 4, he accessed the Telekenex folder on the Summers Straitshot Laptop (now containing 50  
15 files) for the last time. On March 5, he shut down the Summers Straitshot Laptop for the last time.

16 264. On March 9, Summers sent a text message to Straitshot CFO Phil Howe: “I finally  
17 went through all my closet and found the laptop bag behind a box. I can meet you tomorrow  
18 morning to give it to you?” Howe replied: “I am leaving for the airport early. Please give it to our  
19 attorney.” On March 13, Summers delivered the Summers Straitshot Laptop to Straitshot’s  
20 attorney.

21 265. On March 18, 2009, the King County Superior Court issued an Order on  
22 Straitshot’s Motion for Contempt: “[T]he court finds that Defendants have not complied with all  
23 aspects of the court’s prior orders as follows: 1) Defendants failed to timely deliver the laptop in  
24 Mr. Summer’s [sic] possession which violated the Second Amended Temporary Restraining Order  
25 issued on February 18, 2009 .... Because Plaintiff’s acknowledge that the harm sought to be  
26 prevented by restraining orders has occurred and that the case is now one about damages, the court

1 reserves ruling on the sanctions. In accordance with prior orders, the court may impose monetary  
2 sanctions after hearing further evidence or impose adverse evidentiary inferences.”

3 266. At a deposition on August 3, 2009, prior to the removal of this case from the  
4 Superior Court of King County, Summers testified under oath. Among other things, he denied  
5 using the Summers Straitshot Laptop for Telekenex activities once he began working at  
6 Telekenex. He denied accessing any of the data relating to Straitshot customers or the design of  
7 the Straitshot network, once he began working at Telekenex. He stated that he could not recall  
8 using the Summers Straitshot Laptop once he began working at Telekenex. He could not recall  
9 even turning it on.

10 267. In fact, during the very time Summers denied at his deposition even possessing the  
11 Summers Straitshot Laptop, or turning it on, he was repeatedly using it to implement Defendants’  
12 scheme to steal Straitshot’s confidential business information and move Straitshot customers to  
13 the Telekenex network.

14 268. At a deposition in this case on November 16, 2010, Summers again testified that  
15 under oath. This time he claimed that he mistakenly thought he had been using a Telekenex  
16 machine when he was in fact working on his former Straitshot laptop. This testimony contradicted  
17 his previous deposition testimony of August 3, 2009 and could not explain why he had  
18 deliberately erased files on the laptop, why he installed a new operating system to wipe out  
19 existing data, and why he ran the “RegEdit” program to cover up his wrongdoing.

20 269. Summers’ February 16, 2009 declaration under oath, his August 3, 2009 testimony  
21 under oath at his deposition, and his November 16, 2010 testimony under oath at his deposition all  
22 occurred in the context of pending judicial proceedings, and in all three instances Summers had  
23 the intent of interfering with the due administration of justice by providing false testimony.  
24 Further, the testimony was closely related to the subject of the pending proceedings.

25 270. Misappropriation and Use of Trade Secrets and Confidential Information.  
26 Defendants misappropriated and used and continue to misappropriate and use Straitshot’s trade

1 secrets and confidential customer information. Defendants continue to provide services to  
2 Straitshot's customers and continue to solicit Straitshot's customers using confidential trade  
3 secrets and confidential customer information stolen from Straitshot.

4 271. Impact on Straitshot Customers. Straitshot customers, as well as Straitshot itself,  
5 suffered injury as a proximate result of Defendants' actions. The harm to Straitshot customers  
6 was an inherent part of the Defendants' fraudulent scheme. Customers such as U.S. Bearings have  
7 stated that the service that they received from Telekenex was inferior to the service they received  
8 from Straitshot. Further, Defendants' pressured customers into signing contracts with Telekenex,  
9 without affording customers the opportunity to consider other options for telecommunications  
10 services, because Telekenex pressured Straitshot's customers and represented that Telekenex was  
11 the sole alternative to risking a major interruption of their phone, data, and Internet services.  
12 Customers such as U.S. Bearings were forced into longer-term contracts with Telekenex than they  
13 otherwise would have preferred. In addition, customers were forced into Telekenex contracts  
14 containing termination fees and other provisions less favorable than their agreements with  
15 Straitshot had been. All of these impacts represented harm to former Straitshot customers.

16 SIMILAR RACKETEERING SCHEMES

17 272. Defendants engaged in racketeering schemes against other parties in addition to  
18 Straitshot and looked for other opportunities to force businesses to become Telekenex customers  
19 under duress. In March 2009, former Straitshot employee Tom Hunsinger, then an employee of  
20 AuBeta Network Corporation ("AuBeta"), advised Prudell that "there was another Straitshot going  
21 on" at AuBeta which, like Straitshot, was a managed services provider in Washington State. On  
22 March 27, 2009, Telekenex IXC, Inc. issued a press release stating that it had acquired AuBeta via  
23 an Asset Purchase Agreement.

24 273. Charlotte Russe, Inc. ("Charlotte"), a California company, had signed a multi-year  
25 agreement in 2004 with AuBeta, which was contractually scheduled to change to a month-to-  
26 month obligation on April 1, 2009. On March 27, 2009, Durbhakula and Chuck Vondra, on behalf

1 of Charlotte, had a telephone conference with Hunsinger and Chaney, CEO of Telekenex and  
2 Telekenex IXC. Chaney repeated the threat that services to Charlotte would be disconnected if it  
3 did not sign a multi-year contract by the end of the day. Durbhakula and Vondra pointed out that  
4 Charlotte had negotiated with AuBeta to have the agreement become month-to-month in a matter  
5 of days and that, since Telekenex was acquiring AuBeta's assets and contractual obligations, it  
6 should also be required to continue to provide uninterrupted services without requiring that  
7 Charlotte forego the agreed month-to-month arrangement and enter into a new long-term  
8 agreement with Telekenex. But Chaney claimed that, under Telekenex's Asset Purchase  
9 Agreement with AuBeta, Telekenex was assuming AuBeta's contractual liabilities only to  
10 customers who had agreed to a long-term commitment to Telekenex. Chaney falsely stated that  
11 AuBeta was not assigning to Telekenex IXC, and Telekenex IXC was not assuming, AuBeta's  
12 contractual obligations and liabilities to Charlotte and that Telekenex IXC had no obligation to  
13 continue to provide services to Charlotte, unless it executed the proposed contract amendment  
14 with Telekenex.

15 274. On March 30, Chaney emailed Durbhakula to say that the agreement was required  
16 to be "executed today or your service could be disconnected by the underlying carriers."

17 275. The statements of Telekenex and Telekenex IXC, communicated by wires in  
18 interstate commerce, were false and misleading in violation of 18 U.S.C. § 1343. In fact, pursuant  
19 to Telekenex IXC's agreement with AuBeta, AuBeta assigned to Telekenex IXC, and Telekenex  
20 IXC assumed, AuBeta's contractual obligations and liabilities to Charlotte. Telekenex IXC thus  
21 had an existing contractual obligation to continue to provide services to Charlotte, regardless of  
22 any contract amendment or other agreement directly between Charlotte and Telekenex and/or  
23 Telekenex IXC. Further, Telekenex IXC was required to pay any accounts payable to the  
24 underlying carriers, rather than using those accounts payable as an excuse to threaten to  
25 discontinue Charlotte's services.

1           276. Telekenex and Telekenex IXC never disclosed to Charlotte that the Asset Purchase  
2 Agreement provides that Telekenex IXC “hereby assumes, and [AuBeta] hereby assigns to  
3 [Telekenex IXC], [the] (a) obligations and liabilities of [AuBeta] under customer and vendor  
4 contracts relating to the Business [of providing and servicing wide area managed networks] . . .  
5 and (b) accounts payable relating to the Business . . . .” Nor did Telekenex and Telekenex IXC  
6 disclose that Telekenex IXC’s assumption of those liabilities was “the sole consideration for the  
7 sale, transfer and assignment” of AuBeta’s assets. Instead, Telekenex and Telekenex IXC made  
8 affirmative misrepresentations to the contrary. In particular, Telekenex and Telekenex IXC falsely  
9 stated that AuBeta was not assigning to Telekenex IXC, and Telekenex IXC was not assuming,  
10 AuBeta’s contractual obligations and liabilities to Charlotte, and that Telekenex IXC had no  
11 obligation to continue to provide services to Charlotte unless it executed the proposed contract  
12 amendment. Telekenex and Telekenex IXC asserted that Charlotte’s service would be  
13 disconnected by the underlying carriers, without disclosing Telekenex and Telekenex IXC’s own  
14 contractual obligation to pay those carriers’ accounts payable.

15           277. On information and belief, Telekenex and Telekenex IXC knew that they were  
16 required to continue providing services to Charlotte, and to pay the underlying carriers as  
17 necessary to continue to provide those services, regardless of any contract amendment or other  
18 agreement directly between Charlotte and Telekenex and/or Telekenex IXC. Telekenex and  
19 Telekenex IXC acted with the intent of deceiving Charlotte and inducing Charlotte to execute a  
20 long-term agreement. Telekenex and Telekenex IXC knew their representations were false or  
21 made them recklessly and without regard for the truth.

22           278. Charlotte was unaware of material provisions of Telekenex IXC’s Asset Purchase  
23 Agreement with AuBeta. Charlotte signed the long-term agreement with Telekenex IXC under  
24 duress and in order to avoid the threatened termination of service. Charlotte stated to Telekenex:  
25 “[We have] an existing agreement with AuBeta, which will believe should be honored. Despite  
26 our multiple requests, no one has explained why this agreement is somehow no longer valid.

1 Instead, we have been presented with a demand that we sign up for a long term commitment or  
2 service to 185 of our stores will be cut off today. . . . [I]t has been made clear repeatedly that our  
3 service would be shut off if we do not sign up to a long term commitment.”

4 279. Charlotte suffered substantial harm in that it was deprived of the benefit of its  
5 bargain with AuBeta and fraudulently induced to enter into an unnecessary, undesirable, and  
6 expensive contract amendment with Telekenex and Telekenex IXC.

7 280. On June 4, 2009, Charlotte filed suit in California Superior Court for declaratory  
8 and injunctive relief against Telekenex IXC. On June 29, 2009, that court issued a temporary  
9 restraining order preventing Telekenex IXC from terminating Charlotte’s service.

10 281. Meanwhile, on June 11, 2009, Telekenex IXC sued Charlotte in King County  
11 Superior Court regarding the same agreement. Telekenex IXC served a summons and complaint  
12 on Charlotte’s registered agent, but those documents were lost, and Charlotte failed to answer. On  
13 July 9, Telekenex IXC moved for default, and the motion was granted the same day. On July 13,  
14 Telekenex IXC moved for default judgment, and judgment was entered the next day. On July 24,  
15 Telekenex IXC served five writs of garnishment. On July 29, Wells Fargo notified Charlotte that  
16 it had received a writ of garnishment. The next day, Charlotte’s counsel called Telekenex IXC’s  
17 counsel to discuss vacating the default judgment and the writ. Telekenex IXC refused.

18 282. Charlotte then moved in court to vacate the default judgment and writs of  
19 garnishment. The trial court refused, but the Court of Appeals ruled on November 15, 2010 that  
20 the trial court abused its discretion in refusing to vacate the default judgment. The Court of  
21 Appeals found that Charlotte had stated a valid claim of economic duress: “Charlotte has  
22 presented evidence that IXC threatened to allow its service to be cut-off without the notice  
23 required in the [agreement] in order to compel Charlotte to enter into a new contract. Charlotte  
24 was first notified of a potential disruption of service on March 25, 2009. Two days later Chaney  
25 and Hunsinger communicated to [Charlotte’s vice president of technology] that Charlotte’s service  
26 would be disrupted unless it agreed to enter into a multi-year extension of its contract. In an email

1 from Hunsinger to both Chaney and [the vice president], Hunsinger thanked [the vice president]  
2 for his summary of the circumstances that ‘Telekenex has made it clear that service will be  
3 disconnected to nearly 200 of our stores if we do not sign a 36-month contract today.’ At that  
4 time, Charlotte’s [agreement] with AuBeta required 60 days written notice before either party  
5 could cancel the contract. The five day notice given by IXC was a violation of the [agreement].  
6 The threatened termination of services would have left 185 Charlotte stores not able to connect to  
7 the Internet, connect to the company data center, use the telephone, process customer purchases,  
8 track inventory, keep employee timecards, or access company e-mail. Aside from lost revenue  
9 from customer purchases, Charlotte’s goodwill and business reputation likely would have suffered  
10 as a result of the disconnection of service. This was sufficient to demonstrate a serious business  
11 loss. In order to avoid these serious losses, Charlotte was forced to make a decision to its  
12 detriment by entering into a two-year contract extension with IXC.”

13         283. Telekenex and Telekenex IXC made similar threats against other former AuBeta  
14 customers. For example, in April 2009 Telekenex and Telekenex IXC told Restaurant Concepts II,  
15 LLC (“RCII”), a Georgia LLC with numerous business locations in King County, Washington,  
16 that Telekenex IXC would agree to assume RCII’s agreement with AuBeta only if the contract  
17 was extended for a period of 36 months.

18         284. Prior to its acquisition of AuBeta, Telekenex coerced other customers in a similar  
19 way. For example, in December 2007 Telekenex held hostage Perseus Distribution, Inc. and  
20 Perseus Books LLC (collectively, “Perseus”), a California business which had been a Telekenex  
21 customer since 2003. In November 2007, Perseus informed Telekenex that it wished to change  
22 telecommunications carriers. Perseus made this decision because of poor service by Telekenex,  
23 including instances of service interruption.

24         285. At no time prior to December 14, 2007, the date of the scheduled switch, did  
25 Telekenex indicate that it would refuse to comply with Perseus’ lawful request. On December 14,  
26 Perseus switched carrier from Telekenex to Telepacific Communications.

1           286.    However, on the afternoon of December 14, 2007, Telekenex – for the first time –  
2 notified Perseus that it would not release its phone and fax numbers to Telepacific  
3 Communications, stating that it intended to demand an “early termination fee” of \$120,000.  
4 Perseus was unaware of any valid basis for this demand.  Additionally, Perseus understood that,  
5 under the Telecommunications Act, even if a fee is owed, Telekenex could not refuse to port the  
6 numbers until the fee was paid.

7           287.    As a result of Telekenex’ wrongful refusal, Perseus suffered harm to its business  
8 and loss of sales.  When a customer attempted to use any of the Perseus numbers in question, he or  
9 she would hear a busy signal.

10          288.    In January 2008, Perseus sued Telekenex in U.S. District Court for the Northern  
11 District of California, alleging violation of the federal Telecommunications Act.

12          289.    Telekenex and Telekenex IXC perpetrated a similar scheme against Eat ’n Park  
13 Hospitality Group, Inc. (“Eat ’n Park”), a Pennsylvania corporation operating over 150 restaurants  
14 with 10,000 employees, primarily in Pennsylvania.  AuBeta provided service to Eat ’n Park  
15 beginning in 2007.  Telekenex and Telekenex IXC provided no notice to Eat ’n Park of the  
16 pending AuBeta acquisition.  Beginning on March 25, 2009, Eat ’n Park began to receive new  
17 service agreements on Telekenex forms that were materially different from the terms of its  
18 existing contract with AuBeta.  One of the communications stated that the sender “needs the new  
19 service agreements authorized and returned by the end of business on Friday [March 27] to avoid a  
20 service disruption.”

21          290.    Faced with the threatened termination of its service, Eat ’n Park began exploring  
22 new options as well as Telekenex.  Eat ’n Park requested additional information from Telekenex,  
23 including its ability to provide a system that was compliant with the VISA Cardholder Information  
24 Security Program (CISP).  Telekenex never provided Eat ’n Park with confirmation that its service  
25 was CISP compliant.  Eat ’n Park also sent Telekenex a proposed addendum/amendment to the  
26

1 new proposed agreement and a proposed release from AuBeta. Telekenex never signed or  
2 returned these documents to Eat 'n Park.

3 291. Instead, on Monday, March 30, 2009, Eat 'n Park received a proposed consent of  
4 assignment of its existing contract to Telekenex, conditioned on Eat 'n Park's consent to extend  
5 the term of the contract. At this point, Eat 'n Park was still waiting for much of the information it  
6 had requested from Telekenex. Eat 'n Park did not consent to the conditioned assignment.  
7 Nothing in Eat 'n Park's agreement with AuBeta permitted Telekenex to condition a proposed  
8 assignment on an extension of the term of the agreement.

9 292. Eat 'n Park had no choice but to continue with costly efforts to secure new service  
10 while continuing discussions with Telekenex regarding its ability to service Eat 'n Park's account.  
11 On April 7, 2009, having not received satisfactory responses from Telekenex, Eat 'n Park  
12 delivered a notice of default and termination that formally terminated its prior agreement with  
13 AuBeta. Eat 'n Park incurred significant cost and expense to move off the network, and in April  
14 2009 filed suit against Telekenex and Telekenex, IXC in the Western District of Pennsylvania.

15 293. Telekenex perpetrated another fraudulent scheme against Eric F. Anderson, Inc.  
16 ("EFA"), a California corporation and licensed general contractor. On April 9, 2006, EFA entered  
17 into a master service agreement with Telekenex for VoIP service but experienced unsatisfactory  
18 service, including static, dropped calls, and problems with equipment orders. In April 2008,  
19 continuing to have problems with Telekenex's service, EFA notified Telekenex that it was  
20 terminating Telekenex's services and requested that Telekenex "port" its telephone numbers to a  
21 new telecommunications service provider, as required by law.

22 294. On or about May 28, 2008, EFA received a "Customer Notice of Discontinuance of  
23 Service for Non-Payment of Bills" from Telekenex, which stated that EFA's account was paid in  
24 full, that "the amount outstanding on your account is now \$0.00," but that Telekenex was  
25 imposing an early termination fee of \$79,431.75.

26

1           295. On June 3, 2008, EFA's attorneys sent a letter to Zabit explaining the ongoing  
2 problems EFA was experiencing with Telekenex's services, requesting again that Telekenex port  
3 EFA's telephone numbers, and explaining that Telekenex's letter and notice of May 28 failed to  
4 comply with paragraph 6 of the existing master service agreement, which provided that "[i]n the  
5 event of a Telekenex Default, Customer may terminate this Agreement without penalty."

6           296. Shortly after EFA's attorneys sent the June 3 letter to Zabit, EFA's chief financial  
7 officer, Geza Paulovits, telephoned Zabit. During their telephone conversation, Zabit apologized  
8 for the service problems experienced by EFA, stated that Telekenex was "not going to hold [EFA]  
9 hostage," and indicated that he would call CFO Paulovits the following week about porting EFA's  
10 telephone numbers. Zabit never called Paulovits back.

11           297. On or about June 24, 2008, EFA received a second "Customer Notice of  
12 Discontinuance of Service for Non-Payment of Bills" from Telekenex, which stated that EFA's  
13 account was paid in full but that Telekenex was imposing an early termination fee, this time in the  
14 amount of \$74,136.30.

15           298. On June 26, 2008, EFA's attorneys again telephoned Zabit and followed up with a  
16 letter restating their position. Telekenex never responded. Instead, on July 8, 2008, EFA  
17 discovered that Telekenex had disconnected its service, with no warning or notice, and that it  
18 could not place or receive phone calls.

19           299. On July 9, 2008, EFA sued Telekenex for intentional misrepresentation in the  
20 United States District Court for the Northern District of California, alleging that Zabit, on behalf  
21 of Telekenex, represented that no early termination fees would be charged to EFA and that  
22 Telekenex would port EFA's telephone numbers. Telekenex's representations were false, and  
23 EFA was informed and believes that Zabit either knew his representations were false when he  
24 made them or that his representations were made recklessly and without regard to the truth.  
25 Telekenex intended that EFA rely on its representations, and EFA did in fact reasonably rely on  
26

1 those representations to its detriment and harm. EFA asserted that Telekenex's misrepresentations  
2 were committed with malice, oppression, and/or fraud, entitling EFA to punitive damages.

3 300. Telekenex committed a further series of fraudulent misrepresentations against  
4 Dealtree, Inc., a California corporation that operates an Internet retail business for which Internet  
5 connectivity is essential. Dealtree was willing to do business with Telekenex in part because of  
6 Telekenex's representations that its Santa Ana facility included fully redundant connections to the  
7 Internet. Specifically, in August 2007, Telekenex made representations orally and in writing to  
8 Dealtree concerning the Santa Ana facility, stating that it was a "carrier-neutral facility," that it  
9 had "cross-connectivity," and that there were "diverse fiber routes into building." These  
10 representations were important to Dealtree because they meant that, if an Internet connection  
11 failed through one carrier, Telekenex would be able to switch to another carrier through its  
12 "diverse fiber routes" to minimize down time to Dealtree. These capabilities were one of the key  
13 reasons Dealtree chose to entrust the hosting of its business to Telekenex.

14 301. In September 2007, Dealtree and Telekenex entered into a two-year written  
15 agreement for Telekenex to provide Internet service and server hosting to Dealtree.

16 302. In fact, the representations made by Telekenex to win Dealtree's business were  
17 false. Telekenex's Santa Ana facility was neither carrier-neutral (it was dependent on a single  
18 carrier), did not have cross-connectivity, and had no diverse fiber routes (multiple Internet  
19 connections) into the facility.

20 303. In November 2007 and February 2008, Telekenex's Santa Ana facility suffered  
21 catastrophic outages and losses of ability to connect to the Internet, which resulted in all of  
22 Dealtree's websites being unavailable for use by customers and clients for many hours. After  
23 suffering these outages, Dealtree notified Telekenex in writing that it needed to remedy the lack of  
24 redundancy because it had represented that its facilities were fully redundant. After receipt of  
25 Dealtree's letter, Telekenex's president personally informed Dealtree that the problem of lack of  
26 redundancy would be remedied "within days."

1           304. Telekenex did not fix the problem. Dealtree suffered another catastrophic failure in  
2 July 2008 and learned that none of the “fixes” promised by Telekenex had ever been implemented.  
3 After the July outage had been ongoing for three hours, Telekenex told Dealtree that it would  
4 finally be providing the “diverse fiber routes” it had promised initially by provisioning a “dark  
5 fiber” service that normally takes 20 days to activate in “an hour and a half.” When Dealtree  
6 checked in again after the “hour and a half” had ended, Telekenex stated that a few more hours  
7 would be required but could give no guarantees.

8           305. At that point, due to the multiple severe outages suffered by Dealtree and  
9 Telekenex’s repeated failure to cure the problems, Dealtree pulled most of its servers from the  
10 Santa Ana facility and found an alternate provider that could actually provide the services that  
11 Telekenex falsely represented it could. In order to switch hosting providers, Dealtree was required  
12 to call in emergency staff and required its employees and contractors to work many hours of  
13 overtime. Dealtree suffered \$2,500 in set up fees for the emergency move to the new facilities and  
14 lost sales in excess of \$200,000. On September 3, 2008, Dealtree filed suit against Telekenex in  
15 the Superior Court of Orange County, California, alleging fraud and deceit.

16           306. Telekenex committed similar acts against Bryco Funding, Inc. (“Bryco”), a  
17 California mortgage lending company located in San Francisco. In 2005, Telekenex and Bryco  
18 entered into a contract under which Telekenex promised to provide Bryco with reliable and stable  
19 Internet connection services, including both data and voice Internet service (“VoIP”). Bryco was  
20 induced into entering the contract by the repeated assurances of Telekenex that it would provide  
21 reliable and consistent Internet services and, in particular, that the VoIP system would run without  
22 trouble, degradation of call quality, or interruption. Telekenex assured Bryco that the VoIP  
23 services it provided were of the same quality as traditional telephone service. At all times, Bryco  
24 was induced and was entitled to rely on Telekenex’s representations.

25           307. Telekenex materially failed to live up to the terms of the contract throughout its  
26 term. Specifically, Bryco’s Internet connection services were unsuccessfully installed and were

1 not fully operational. Bryco's phone call over the VoIP system were marked by poor quality and  
2 in many instances dropped calls that resulted in customer disconnections. These problems  
3 represented a substantial hardship to Bryco, because it was not able to communicate properly with  
4 its customers and potential customers. Beginning in 2006, Bryco documented in written email  
5 messages to Telekenex, as well as orally, the numerous and serious problems that Bryco was  
6 having.

7 308. On or about June 1, 2006, Bryco sent Telekenex written notice stating that it  
8 considered Telekenex to be in material breach of the agreement, and that unless the call quality  
9 problems were cured immediately, Bryco would consider the agreement to be rescinded, and that  
10 it requested Telekenex's cooperation in transitioning Bryco's IT and voice needs to another  
11 service provider who would be able to perform the job competently.

12 309. Telekenex responded on June 30, 2006 that it was continuing to work on a solution  
13 to the call quality and disconnection problems. However, Bryco continued to have numerous  
14 serious problems with customer calls and disconnections.

15 310. Consistent with its notice of June 1, 2006, Bryco arranged for the services of  
16 another Internet and IT services provider, Telepacific Communications ("Telepacific").

17 311. On July 7, 2006, Telekenex sent a letter to Bryco stating that it had received a  
18 notice authorizing a change in Bryco's telecommunications carrier from Telekenex to Telepacific.  
19 Telekenex alleged that this was a "clear breach" of the 2005 agreement between Bryco and  
20 Telekenex and that Bryco was in default under the terms of the agreement. Telekenex sent a  
21 notice that Bryco had failed to pay balances outstanding and demanding \$46,715.02 by the close  
22 of business on July 12, 2006 (five days' notice).

23 312. On July 12, 2006, Bryco's CEO sent an email to Chaney requesting a meeting to  
24 discuss the situation. Chaney did not respond.

25 313. On the morning of July 13, 2006, Telekenex disconnected Bryco's service, causing  
26 it to lose all of its voice and Internet services. Bryco's business was completely shut down, and it

1 was losing thousands of dollars of revenue per hour, as a result of its inability to receive  
2 telecommunications service. Customers were unable to contact Bryco for important questions  
3 regarding their mortgages, accounts, and other important matters. Customer loan closings were  
4 jeopardized.

5 314. On the morning of July 13, 2006, after shutting down Bryco's service, Zabit sent  
6 Bryco written notice by fax that Telekenex was exercising its rights to terminate the agreement for  
7 default, on five days' notice. Zabit advised that, to restore service, Bryco would need to pay the  
8 outstanding balance in full, reconnection fees in the amount of \$13,400.00, and two months'  
9 deposit, for a total amount of \$90,115.02. Telekenex further advised that it would restore service  
10 only if Bryco signed a new agreement for an additional three-year term and signed a mutual  
11 release of all claims, known and unknown.

12 315. The five days' notice and manner of notice of disconnection were completely  
13 inconsistent with the tariffs that Telekenex had filed with the California Public Utilities  
14 Commission, posted on its website, and incorporated into the 2005 agreement with Bryco. The  
15 legal tariffs required seven days' notice, limited the imposition of reconnection fees, and provided  
16 for credit allowances due to interrupted service.

17 316. In a telephone conversation on July 13, 2006, Zabit stated that the tariff "didn't  
18 apply" to the situation, which was a false statement.

19 317. Despite Telekenex's wrongful actions, Bryco was faced with no other alternative  
20 but to submit to Telekenex's demands. Bryco signed both a document entitled "Settlement  
21 Agreement" and a new service agreement provided by Telekenex.

22 318. On August 11, 2006, Bryco was finally able to transition its services to another  
23 telecommunications provider. It was unable to change its provider without substantial interruption  
24 until this earliest available date, and it did make such change with all deliberate haste on such  
25 earliest available date.

1           319. On September 12, 2006, Bryco sued Telekenex in the Superior Court for the  
2 County of San Francisco, alleging rescission, breach of contract, breach of the covenant of good  
3 faith and fair dealing, unfair business practices, tortious interference with economic relations, and  
4 other causes of action.

5           320. Telekenex was also involved in a fraudulent transfer to defeat the ability of Robin  
6 Reichert (“Reichert”), a California resident living in San Francisco, to enforce a judgment  
7 recovered against Net.World, Inc., a Telekenex successor corporation, and Extension 11. On  
8 January 5, 2005, Reichert commenced an action against Net.World and Extension 11 in San  
9 Francisco Superior Court and in 2006 recovered a final judgment in excess of \$333,000. Between  
10 approximately November 2001 and March 2007, Net.World and Extension 11 fraudulently  
11 transferred their assets, consisting of tangible personal property, ongoing business, accounts  
12 receivable, licensing agreements, intellectual property, trademarks, goodwill, and customer  
13 contracts, to a group of other companies, including Telekenex. The transfer of such assets was  
14 without consideration of value and was done with actual intent to hinder, delay, and defraud  
15 Reichert and other creditors of Net.World and Extension 11. Reichert did not discover the  
16 transfers until January 2007 and thereafter brought suit against Telekenex and other defendants for  
17 fraudulent conveyance in San Francisco Superior Court.

18           321. When Telekenex IXC, Inc. purchased the assets of AuBeta, Telekenex IXC  
19 participated in a scheme to hinder or defraud an AuBeta creditor. On or about June 7, 2006,  
20 AuBeta executed two lease agreements with Michigan Street Buildings, LLC (“Landlord”) for a  
21 term of 120 months with rent increasing on an annual basis. Although AuBeta’s rent under the  
22 leases for January 2009 was \$45,000, AuBeta unilaterally, and without Landlord’s agreement or  
23 consent, paid a reduced rent of \$25,000, which was \$20,000 less than AuBeta owed.  
24 Subsequently, AuBeta made unilaterally reduced payments of \$25,000 in February 2009 and  
25 March 2009 and stopped paying rent thereafter. Landlord informed AuBeta that its failure to pay  
26 amounts owed would necessitate Landlord pursuing available remedies for collection, including

1 filing suit. Landlord sent AuBeta notices of default. On or about March 27, 2009, Telekenex  
2 IXC, Inc. executed an asset purchase agreement under which Telekenex IXC received  
3 substantially all of AuBeta's assets, including its cash and cash equivalents, account receivables,  
4 customer contracts, intellectual property, hardware and software, servers, computers, and office  
5 equipment. Telekenex IXC knew, or should have known, that the asset sale would delay, hinder,  
6 or defraud Landlord's claims. On August 25, 2010, Landlord filed suit against Telekenex IXC,  
7 Inc. in King County Superior Court, alleging fraudulent conveyance and other claims.

8 322. Interstate Wire Services. Defendants used and continue to use interstate wire  
9 services to misappropriate and unlawfully use Straitshot's trade secrets and confidential customer  
10 information.

11 323. Income. Defendants obtained and continue to obtain income from their pattern of  
12 racketeering activity, using interstate wire services to misappropriate and use Straitshot's trade  
13 secrets and confidential customer information. Defendants used and continue to use that income  
14 to operate and benefit their enterprise by taking over Straitshot's customers and deriving income  
15 from those customers.

16 324. Fraudulent transfer of assets. On information and belief, a fraudulent transfer of  
17 assets by Telekenex and Telekenex IXC to IXC, Inc. and IXC Holdings, Inc. occurred in August  
18 2010, involving use of mail and wire communications.

19 **V. FIRST CAUSE OF ACTION**  
20 **(Breach of Contract against Prudell and Radford)**

21 325. Straitshot realleges and incorporates herein by reference the allegations contained  
22 above.

23 326. Prudell and Radford have breached their Straitshot Employment Contracts by  
24 using, communicating and divulging Straitshot confidential and proprietary information to and on  
25 behalf of Telekenex and Mammoth, by soliciting Straitshot's engineers to leave Straitshot, and by  
26 retaining and using Straitshot's confidential customer information.



1 335. Prudell, Radford and Summers had a duty of loyalty to their employer Straitshot  
2 not to solicit or help solicit Straitshot's customers and business prospects on behalf of a  
3 competitor.

4 336. Prudell, Radford and Summers breached their duty of loyalty to Straitshot by  
5 soliciting Straitshot's customers and business prospects on behalf of Telekenex and by working  
6 with Mammoth to port the Straitshot customer circuits to Telekenex while Prudell, Radford and  
7 Summers were employed by Straitshot.

8 337. Straitshot has suffered damages as a direct result of Prudell's, Radford's and  
9 Summers' breaches of their duty of loyalty to Straitshot and Straitshot is entitled to recover those  
10 damages from Prudell, Radford and Summers.

11 **VIII. FOURTH CAUSE OF ACTION**  
12 **(Interference with Contractual Relations against all Defendants)**

13 338. Straitshot realleges and incorporates herein by reference the allegations contained  
14 above.

15 339. Straitshot had valid contractual relationships with each of its customers including  
16 without limitation each of the customers described above.

17 340. Defendants had knowledge of Straitshot's contractual relationships with Straitshot  
18 customers.

19 341. Defendants have intentionally interfered with Straitshot's contractual relationships  
20 with Straitshot customers by inducing or causing a breach or termination of these contractual  
21 relationships.

22 342. Defendants had a duty of noninterference with Straitshot's contractual relations  
23 with Straitshot customers.

24 343. Straitshot has suffered damages as a direct result of Defendants' interference with  
25 Straitshot's contractual relations with its customers and is entitled to recover those damages from  
26 Defendants.

**IX. FIFTH CAUSE OF ACTION  
(Misappropriation of Trade Secrets Against All Defendants)**

1  
2 344. Straitshot realleges and incorporates herein by reference the allegations contained  
3 above.

4 345. Straitshot's customer information, including without limitation names, contact  
5 information, terms of customer contracts, dates of Straitshot contract termination, pricing, details  
6 of network architecture, firewall controls, network addressing, and other sensitive data about each  
7 customer's network requirements and usage, is a trade secret.

8 346. Defendants misappropriated Straitshot's trade secrets.

9 347. Defendants' misappropriation of Straitshot's trade secrets was a proximate cause of  
10 damages to Straitshot.

11 348. As a result of the misappropriation, Defendants received money or benefits that in  
12 justice and fairness belong to Straitshot.

13 349. The misappropriation was willful and malicious.

14 350. Straitshot is entitled to an award of exemplary damages against Defendants  
15 pursuant to RCW 19.108.030.

16 351. Straitshot is entitled to an award of attorney's fees pursuant to RCW 19.108.040.

17  
18 **X. SIXTH CAUSE OF ACTION**  
19 **(Violation of the Lanham Act Against the Telekenex Companies, Zabit, Chaney, Prudell and**  
20 **Radford)**

21 352. Straitshot realleges and incorporates herein by reference the allegations contained  
22 above.

23 353. Telekenex, Zabit, Chaney, Prudell and Radford made false statements about  
24 Straitshot including without limitation that Straitshot was going out of business.

25 354. Telekenex, Zabit, Chaney, Prudell and Radford's statements deceived or had the  
26 tendency to deceive a substantial portion of the intended audience for those statements.

1 355. Telekenex, Zabit, Chaney, Prudell and Radford's deception was material and was  
2 likely to influence purchasing decisions.

3 356. Telekenex's services are, and Straitshot's services were, in interstate commerce.

4 357. There is likelihood if not a probability of injury to Straitshot, including without  
5 limitation declination of sales and loss of good will, resulting from the statements.

6 358. Straitshot is entitled to recover from the Telekenex Companies, Zabit, Chaney,  
7 Prudell and Radford, the Telekenex Companies' profits, Straitshot's damages, and Straitshot's  
8 attorney's fees and costs.

9 **XI. SEVENTH CAUSE OF ACTION**  
10 **(Violation of the Consumer Protection Act Against All Defendants)**

11 359. Straitshot realleges and incorporates herein by reference the allegations contained  
12 above.

13 360. Defendants acted unfairly and deceptively including by making statements that  
14 Straitshot is going out of business, by using Straitshot's trade secrets and confidential information,  
15 and by inducing Straitshot's customers to breach their contracts with Straitshot.

16 361. Defendants' unfair and deceptive acts occurred in the conduct of trade or  
17 commerce.

18 362. Defendants' unfair and deceptive acts affect the public interest.

19 363. Defendants' unfair and deceptive acts resulted in injury to Straitshot in its business.

20 364. Straitshot is entitled to recover against Defendants treble damages, attorney's fees,  
21 and statutory costs.

22 **XII. EIGHTH CAUSE OF ACTION**  
23 **(Federal RICO Claim Against All Defendants)**

24 365. Straitshot realleges and incorporates herein by reference the allegations contained  
25 above.

26

1 366. Defendants have acted unlawfully in violation of 18 U.S.C. §§ 1962(a), 1962(c),  
2 and 1962(d).

3 367. Each Defendant is a person liable for his or its conduct under the RICO statutes.

4 368. Defendants are engaging in a continuing pattern of racketeering activity by (a)  
5 defrauding Straitshot of its trade secrets and using the misappropriated trade secrets through  
6 multiple schemes of racketeering involving the use of interstate wire communications in violation  
7 of 18 U.S.C. § 1343. (b) harming Straitshot customers in addition to Straitshot; (c) committing  
8 similar acts of racketeering against other parties, such as Charlotte, Eat 'n Park, EFA, Dealtree,  
9 and Bryco, in violation of 18 U.S.C. §§ 1341 and 1343; (d) spoliation of evidence and obstruction  
10 of justice in violation of 18 U.S.C. § 1512(c)(1); (e) false testimony by Summers on February 16,  
11 2009, August 3, 2009, and November 16, 2010, which amounts to obstruction of justice in  
12 violation of 18 U.S.C. §§ 1503(a) and 1512(c)(2); and (f) fraudulent transfer of assets by  
13 Telekenex and Telekenex IXC to IXC, Inc. and IXC Holdings, Inc. in August 2010, involving use  
14 of mail and interstate wire communications in violation of 18 U.S.C. §§ 1341 and 1343.

15 369. These schemes satisfy the continuity and pattern requirement because they involve  
16 multiple, extensive schemes with a wide variety of predicate acts spanning October 2008 to  
17 November 2010 and threatening to continue in the future. They involve multiple victims,  
18 including Straitshot and its former customers, and similar acts of racketeering against other  
19 parties, such as Charlotte, Eat 'n Park, EFA, Dealtree, and Bryco. The evidence shows that  
20 racketeering acts were and are Defendants' regular way of doing business and threatened  
21 repetition in the future, even after Straitshot terminated its services and closed its doors in 2009.  
22 The closure of Straitshot did not end Defendants' racketeering activity.

23 370. Defendants joined together to form an enterprise whose common purpose is to  
24 defraud Straitshot of its trade secrets and use the misappropriated trade secrets to unlawfully cause  
25 Straitshot's customers to abandon their Straitshot contracts and move, enlarge, and lengthen their  
26 business to and with Telekenex, for the benefit of their common enterprise and its individual

1 members (“Defendants’ Enterprise”). Defendants’ Enterprise engages in interstate commerce and  
2 is ongoing.

3 371. Defendants each receive income from their pattern of racketeering activity and use  
4 or invest that income to establish, operate, or acquire an interest in Defendants’ Enterprise  
5 (“Defendants’ Investment”).

6 372. Defendants also used Defendants’ Investment to directly and wrongfully compete  
7 with Straitshot and to fund further theft and use by Defendants of Straitshot’s trade secrets, and to  
8 use the misappropriated trade secrets to further wrongful inducement of Straitshot’s customers to  
9 abandon their Straitshot contracts.

10 373. Each Defendant conducts or participates in the conduct of Defendants’ Enterprise’s  
11 affairs through a pattern of racketeering activity for the benefit of Defendants’ Enterprise and each  
12 Defendant’s benefit.

13 374. Each Defendant has conspired and continues to conspire to violate 18 U.S.C. §§  
14 1962(a) and 1962(c).

15 375. Straitshot has been and is being damaged by Defendants’ Enterprise and by  
16 Defendants’ investment of income in Defendants’ Enterprise.

17 376. Straitshot is entitled to recover against Defendants treble damages, attorney’s fees,  
18 and costs.

19 **XIII. NINTH CAUSE OF ACTION**

20 **(Washington Criminal Profiteering Act Claim Against All Defendants)**

21 377. Straitshot realleges and incorporates herein by reference the allegations contained  
22 above.

23 378. Defendants have acted unlawfully in violation of RCW 9A.82.001 *et seq.*

24 379. Each Defendant is a person liable for his or its conduct under the Washington  
25 Criminal Profiteering Act.

1           380. Defendants joined together to form an enterprise whose common purpose is to  
2 defraud Straitshot of its trade secrets and use the misappropriated trade secrets to unlawfully cause  
3 Straitshot's customers to abandon their Straitshot contracts and move, enlarge and lengthen their  
4 business to and with Telekenex, for the benefit of their common enterprise and its individual  
5 members ("Defendants' Enterprise").

6           381. Defendants engaged in a continuing pattern of criminal profiteering activity by  
7 defrauding Straitshot of its trade secrets and using the misappropriated trade secrets to wrongfully  
8 induce Straitshot's customers to abandon their Straitshot contracts and move their business to  
9 Telekenex for the financial benefit and purpose of operating the Defendants' Enterprise and for  
10 each Defendant's financial gain in violation of the Washington Criminal Profiteering Act.  
11 Defendants acted with a common intent toward and scheme toward and concerning Straitshot and  
12 acted through the Defendants' Enterprise.

13           382. Defendants have stolen Straitshot trade secrets valued at more than \$5,000.

14           383. Defendants have each knowingly received proceeds derived from Defendants'  
15 Enterprise and used such to establish or operate Defendants' Enterprise and for their financial gain  
16 ("Defendants' Investment").

17           384. Defendants conspired to engage in a pattern of criminal profiteering for the purpose  
18 of receiving income from the criminal profiteering and using that income to operate the  
19 Defendants' Enterprise.

20           385. Defendants used Defendants' Investment to directly and wrongfully compete with  
21 Straitshot, to fund further theft and use by Defendants of Straitshot's trade secrets, and to use the  
22 misappropriated trade secrets to further wrongful inducement of Straitshot's customers to abandon  
23 their Straitshot contracts.

24           386. Straitshot has been damaged by Defendants' Enterprise and by Defendants'  
25 investment of profiteering income in Defendants' Enterprise.

26

1 387. Straitshot is entitled to recover against Defendants treble damages, attorney's fees,  
2 and costs.

3 **XIV. TENTH CAUSE OF ACTION**  
4 **(Promissory Estoppel Against Mammoth)**

4 388. Straitshot realleges and incorporates herein by reference the allegations contained  
5 above.

6 389. In November 2008, Mammoth agreed to defer payment of \$120,000 of fees  
7 Straitshot owed Mammoth and to permit Straitshot to pay subsequent invoices when they came  
8 due.

9 390. Mammoth understood that the Deferral Agreement was a critical component to  
10 Straitshot's restructuring plan and that Straitshot was relying on the Deferral Agreement to make  
11 its plan work. Mammoth understood that absent the Deferral Agreement, Straitshot would have  
12 pursued other restructuring options, including potentially filing for bankruptcy and selling off its  
13 assets to pay secured creditors (which did not include Mammoth) or, alternatively, moving all of  
14 its circuits from Mammoth to one of Mammoth's competitors.

15 391. As anticipated by Straitshot and Mammoth, Mammoth's approval of the Deferral  
16 Agreement caused Straitshot to abandon its other restructuring options, including potentially filing  
17 for bankruptcy and selling off its assets to pay secured creditors (which did not include Mammoth)  
18 or, alternatively, moving all of its circuits from Mammoth to one of Mammoth's competitors,  
19 either of which would have provided value to Straitshot's secured creditors and permitted  
20 Straitshot to remain a going concern.

21 392. Straitshot's reliance upon Mammoth's promise was justified.

22 393. Injustice can be avoided only by enforcing Mammoth's promise and compensating  
23 Straitshot for the significant damages resulting from Mammoth's duplicity.

24 **XV. ELEVENTH CAUSE OF ACTION**  
25 **(Breach of Contract Against Mammoth)**

1 394. Straitshot realleges and incorporates herein by reference the allegations contained  
2 above.

3 395. Pursuant to the Written Contract, Mammoth was forbidden from disclosing to third  
4 parties, confidential and proprietary information regarding Straitshot's system including pricing.  
5 Mammoth breached the Written Contract by divulging confidential and proprietary information,  
6 including pricing, to Straitshot's competitor Telekenex.

7 396. Straitshot has suffered damages as a direct result of Mammoth's breach of the  
8 Written Contract and is entitled to recover those damages from Mammoth.

9 **XVI. TWELFTH CAUSE OF ACTION**  
10 **(Tortious Interference With Contractual Expectancy Against Mammoth)**

11 397. Straitshot realleges and incorporates herein by reference the allegations contained  
12 above.

13 398. Straitshot had valid contractual relationships with Voxitas.

14 399. Mammoth had knowledge of Straitshot's contractual relationship with Voxitas.

15 400. Mammoth has intentionally interfered with Straitshot's contractual relationship  
16 with Voxitas by inducing or causing a breach of this contractual relationship.

17 401. Mammoth had a duty of noninterference with Straitshot's contractual relations with  
18 Voxitas.

19 402. Straitshot has suffered damages as a direct result of Mammoth's interference with  
20 Straitshot's contractual relations with Voxitas and is entitled to recover those damages from  
21 Mammoth.

22 **XV. THIRTEENTH CAUSE OF ACTION**  
23 **(Successor Liability Against IXC Holdings)**

24 403. Plaintiff realleges and incorporates herein by reference the allegations contained  
25 above.

26

1 404. On information and belief, IXC Holdings expressly or impliedly agreed to assume  
2 the liabilities of Telekenex.

3 405. On information and belief, Telekenex merged or consolidated into IXC Holdings.

4 406. On information and belief, IXC Holdings is a mere continuation of Telekenex.

5 407. On information and belief, the transfer of assets by Telekenex to IXC Holdings was  
6 fraudulent.

7 408. IXC Holdings is a successor to Telekenex and Straitshot is entitled to recover from  
8 IXC Holdings any judgment obtained herein against Telekenex.

9 **XVII. FOURTEENTH CAUSE OF ACTION**  
10 **(Fraudulent Transfer Against the Telekenex Companies)**

11 409. Plaintiff realleges and incorporates herein by reference the allegations contained  
12 above.

13 410. On information and belief, the transfers by Telekenex IXC Holdings constitute  
14 fraudulent transfers under RCW 19.40.

15 411. Straitshot is entitled to recover from IXC Holdings any judgment obtained herein  
16 against Telekenex.

17 **XVIII. FOURTEENTH CAUSE OF ACTION**  
18 **(Corporate Disregard Against Chaney and Zabit)**

19 412. Plaintiff realleges and incorporates herein by reference the allegations contained  
20 above.

21 413. On information and belief, the corporate form of IXC Holdings was intentionally  
22 used to violate or evade Telekenex's duties to Plaintiff.

23 414. On information and belief, disregard of the corporate form of IXC Holdings is  
24 necessary and required to prevent unjustified loss to Plaintiff.

25 415. The Telekenex Companies' liability to Straitshot may be assessed against  
26 shareholders Chaney and Zabit.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Straitshot Communications, Inc. prays for judgment as follows:

- A. For money damages in an amount to be established at trial;
- B. For exemplary damages;
- C. For an award of Straitshot's attorneys fees and costs; and
- D. For such other and further legal and equitable relief as the Court may deem just and

proper.

DATED this 9th day of December, 2010.

Respectfully submitted,

SUMMIT LAW GROUP PLLC

By /s/ Jessica L. Goldman

\_\_\_\_\_  
Jessica L. Goldman, WSBA #21856  
SUMMIT LAW GROUP, PLLC  
315 5<sup>th</sup> Avenue S, Suite 1000  
Seattle, WA 98104-2682  
Phone: 206.676.7000  
Fax: 206.676.7001  
*jessicag@summitlaw.com*

Leonard A. Gail  
(Admitted *Pro Hac Vice*)  
MASSEY & GAIL LLP  
50 East Washington Street, Suite 400  
Chicago, IL 60602  
Phone: 312.283.1590  
Fax: 312.379.0467  
*lgail@masseygail.com*

*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Leigh Ann Collings Tift  
LITTLER MENDELSON, P.C.  
One Union Square  
600 University Street, Suite 3200  
Seattle, WA 98101-3122  
*ltift@littler.com*

A. Chad Allred  
ELLIS LI & MCKINSTRY  
Market Place Tower  
2025 First Avenue, Penthouse A  
Seattle, WA 98121  
*callred@elmlaw.com*

Kenneth J. Diamond  
WINTERBAUER & DIAMOND PLLC  
1200 Fifth Avenue, Suite 1700  
Seattle, WA 98101  
*ken@winterbauerdiamond.com*

DATED this 9th day of December, 2010.

/s/ Deanna L. Schow  
Deanna L. Schow  
Legal Assistant  
SUMMIT LAW GROUP, PLLC  
315 5<sup>th</sup> Avenue S, Suite 1000  
Seattle, WA 98104-2682  
Phone: 206.676.7000  
Fax: 206.676.7001  
*deannas@summitlaw.com*

# EXHIBIT 2

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STRAIGHTSHOT COMMUNICATIONS,  
INC., a Washington Corporation, et al.

Plaintiffs,

vs.

TELEKENEX, INC., a Delaware Corp., et al.

Defendants.

No. C10-268Z

ORDER

THIS MATTER comes before the Court on four motions for summary judgment. Three groups of defendants have moved for summary judgment on the claims brought by plaintiffs Straightshot Communications, Inc. (“SCI”) and Straightshot RC, LLC (“SRC”). See Mot., docket no. 150 (filed by defendants Telekenex, Brandon Chaney, Anthony Zabit, and Joshua Summers, collectively the “Telekenex Defendants”); Mot., docket no. 152 (filed by defendants Mark Prudell and Mark Radford); and Mot., docket no. 161 (filed by defendants Mammoth Networks, LLC and Brian Worthen, collectively “Mammoth”). The remaining motion, docket

1 no. 157, is brought by counterclaim defendants SCI and SRC, and third party  
2 defendants Andrew Gold, Stephen Perry, and Claritage Strategy Fund, L.P.  
3 (“Claritage”) (collectively the “Straightshot Parties”), and seeks the dismissal of  
4 Mammoth’s counterclaims and third party claims. Having reviewed the papers filed in  
5 support of, and opposition to, the various motions, the Court now enters the following  
6 Order.  
7

## 8 **DISCUSSION**

### 9 **A. Standard of Review**

10 Summary judgment is appropriate where “there is no genuine dispute as to any  
11 material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ.  
12 P. 56(a); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986). Material facts  
13 are those which might affect the outcome of the suit under governing law. Id. at 248.  
14 The Court must draw all reasonable inferences in favor of the non-moving party. See  
15 F.D.I.C. v. O’Melveny & Meyers, 969 F.2d 744, 747 (9th Cir.1992), rev’d on other  
16 grounds, 512 U.S. 79 (1994). The nonmoving party, however, must make a “sufficient  
17 showing on an essential element of her case with respect to which she has the burden  
18 of proof” to survive summary judgment. Celotex Corp. v. Catrett, 477 U.S. 317, 323  
19 (1986).  
20  
21  
22

### 23 **B. The Telekenex Defendants’ Motion for Partial Summary Judgment,** 24 **Docket no. 150**

25 The Telekenex Defendants move for partial summary judgment on plaintiffs’  
26 claims for: (a) intentional interference with contractual relations; (b) violation of the

1 Lanham Act; and (c) violation of the Consumer Protection Act (“CPA”). The  
2 Telekenex Defendants also move for summary judgment on the issue of whether the  
3 identity of SCI’s customers can constitute a “trade secret” for purposes of plaintiffs’  
4 misappropriation of trade secrets claim. The Court DENIES the Telekenex  
5 Defendants’ motion. There are genuine disputes of material fact that preclude  
6 summary judgment.

8 **C. Prudell and Radford’s Motion for Summary Judgment, Docket no. 152**

9 Prudell and Radford move for summary judgment on plaintiffs’ claims for:  
10 (a) breach of contract; (b) breach of the duty of loyalty; (c) intentional interference  
11 with contractual relations; (d) misappropriation of trade secrets; (e) violation of the  
12 Lanham Act; and (f) violation of the CPA. The Court DENIES Prudell and Radford’s  
13 motion. There are genuine disputes of material fact that preclude summary judgment.<sup>1</sup>  
14 See Thola v. Henschell, 140 Wn. App. 70, 78, 164 P.3d 524 (2007).  
15

17 **D. The Straightshot Parties’ Motion for Summary Judgment, Docket no. 157**

18 The Straightshot Parties move for summary judgment on Mammoth’s  
19 counterclaims/third party claims for: (a) fraudulent transfer; (b); successor liability;  
20 and (c) unlawful corporate distributions.<sup>2</sup> At issue in Mammoth’s claims is an  
21

22 <sup>1</sup> Plaintiffs’ trade secret claim does not supersede their other claims against Prudell and  
23 Radford, which do not arise out of the taking of SCI’s trade secrets. RCW  
24 19.108.900(2)(a); Boeing Co. v. Sierracin Corp., 108 Wn.2d 38, 48, 738 P.2d 665  
25 (1987); Pac. Aerospace & Elec., Inc. v. Taylor, 295 F. Supp. 2d 1205, 1212 (E.D.  
26 Wash. 2003); Thola, 140 Wn. App. at 83.

<sup>2</sup> The Straightshot Parties also move for summary judgment on Mammoth’s claims for  
Breach of Contract (Mammoth’s First Cause of Action) and Unjust Enrichment

1 agreement between SCI and Claritage, entered into prior to the events giving rise to  
2 this lawsuit, and pursuant to which Claritage agreed to loan SCI up to \$2,300,000.  
3 Perry Decl. ¶ 3, docket no. 160. In exchange, SCI granted Claritage a security interest  
4 (the “Security Agreement”) in all of SCI’s tangible and intangible assets. Id. at Ex. 3.  
5 On April 18, 2008, Claritage perfected its security interest by filing a UCC-1 financing  
6 statement. Id. at Ex. 4. Over the course of the next several months, Claritage loaned  
7 SCI millions of dollars pursuant to the Security Agreement. Id. at Exs. 5-8. When  
8 SCI failed to meet its obligations to repay the loans, Claritage sent a demand for  
9 payment, and notified SCI that failure to comply with its obligations under the parties’  
10 agreements could result in Claritage foreclosing on its security interest. Id. at Ex. 9.  
11 In June 2009, Claritage assigned its rights under the Security Agreement to Claritage’s  
12 wholly owned subsidiary, SRC. Id. at Ex. 13. SRC foreclosed on its security interest  
13 and acquired all of SCI’s tangible and intangible assets that were subject to the  
14 Security Agreement in July 2009. Id. at Ex. 14. Mammoth now brings a number of  
15 claims against SCI, SRC, Claritage, Gold, and Perry arising out of the foreclosure that  
16 took place in July 2009.  
17  
18  
19  
20  
21

---

22 (Mammoth’s Second Cause of Action) against Gold, Perry, Claritage, and SRC. Mot.  
23 at 12, docket no. 157. Mammoth has filed no opposition as to these parties and these  
24 claims, which the Court construes as an admission that the motion has merit. See  
25 Local Rule CR 7(b)(2). Moreover, the contract was solely between Mammoth and  
26 SCI. Worthen Decl. Ex. A at 1, docket no. 162. Accordingly, the Court GRANTS the  
Straightshot Parties’ motion in part, and DISMISSES Mammoth’s claims for breach of  
contract and unjust enrichment against Gold, Perry, Claritage, and SRC.

1 The Court STRIKES, in part, and DEFERS, in part, the Straightshot Parties'  
2 motion. The Court STRIKES in part, as moot the Straightshot Parties' motion on  
3 Mammoth's claims for fraudulent transfer and successor liability. The parties agree  
4 that the security agreement between SCI and Claritage/SRC did not create an interest  
5 in after-acquired commercial tort claims. See RCW 62A.9A-204(b)(2).  
6 Consequently, Claritage/SRC did not acquire a security interest in SCI's commercial  
7 tort claims,<sup>3</sup> which remain with SCI.<sup>4</sup> The lien foreclosure that took place in July 2009  
8 transferred only those assets of SCI subject to a perfected security interest. As such,  
9 the foreclosure was not fraudulent, and the Court STRIKES as moot Mammoth's  
10 claims for fraudulent transfer and successor liability (which Mammoth argues is  
11 predicated exclusively on SCI's alleged fraudulent transfer of assets).  
12  
13

14 The Court DEFERS ruling on the remainder of the Straightshot Parties' motion,  
15 relating to Mammoth's claim for unlawful corporate distributions in violation of RCW  
16 23B.14.070, and DIRECTS Mammoth to submit additional briefing on the following  
17 issues:  
18

- 19 (a) Whether the alleged "unlawful distribution" occurred in March 2008  
20 when SCI entered into the security agreement with Claritage, in July 2009 when  
21 SRC foreclosed on the security interest, or on some other date;

---

22 <sup>3</sup> As the issue is not fully briefed by the parties, the Court declines at this juncture to  
23 address which of SCI's claims, if any, meet the definition of "commercial tort claims"  
24 under Washington's version of the Uniform Commercial Code.

25 <sup>4</sup> The Court's Order adding SRC as a party had no effect on SCI's status as a plaintiff  
26 in this lawsuit. Minute Order, docket no. 81. SCI also remains a plaintiff for all  
commercial tort claims brought against the defendants.

1  
2 (b) Identifying the evidence in the record that demonstrates that SCI was  
3 incapable of meeting its current obligations as they came due on the date the  
4 unlawful distribution occurred, or that SCI's total assets were less than the sum  
5 of its total liabilities on the date the unlawful distribution occurred; and

6 (c) Identifying the evidence in the record that demonstrates that SCI's  
7 directors failed to act in conformance with their statutory duties in approving  
8 the distribution.

9 See RCW 23B.08.310(1); 23B.06.400(2); 23B.08.300(1)(a)-(c).

10 In preparing its response, Mammoth should address the significance or  
11 relevance of the following authorities: RCW 23B.06.400(5);  
12 RCW 23B.06.400(4)(b)(ii); and MODEL BUS. CORP. ACT § 6.40 cmts. 8(b), (c) (2005).

13 Mammoth's response shall be limited to five (5) pages and shall be filed no later than  
14 March 11, 2011. The Straightshot Parties shall not file a response unless one is  
15 requested by the Court.

16 **E. Mammoth's Motion for Summary Judgment, docket no. 161**

17 Mammoth moves for summary judgment on plaintiffs' claims for:

18 (a) intentional interference with contractual relations; (b) misappropriation of trade  
19 secrets; (c) violation of the CPA; (d) violation of the Racketeer Influenced and Corrupt  
20 Organizations Act ("RICO"); (e) violation of the Washington Criminal Profiteering  
21 Act ("WCPA"); (f) promissory estoppel; (g) breach of contract; and (h) intentional  
22 interference with a business expectancy. Mammoth also moves affirmatively for  
23 summary judgment on its breach of contract counterclaim against SCI. The Court  
24 GRANTS in part and DENIES in part Mammoth's motion for summary judgment as  
25 follows.  
26

1           1.     The Court GRANTS in part Mammoth’s motion as to Plaintiffs’ CPA  
2                     Claim and Promissory Estoppel Claim

3                     a.     CPA (Plaintiffs’ Seventh Cause of Action)

4           To prevail on their CPA claim, plaintiffs bear the burden of proving (1) an  
5 unfair or deceptive act or practice by Mammoth; (2) occurring in trade or commerce;  
6 (3) that affects the public interest; (4) which causes; (5) injury to plaintiffs’ business or  
7 property. Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wn.2d  
8 778, 784, 719 P.2d 531 (1986). The “unfair or deceptive act or practice” element of a  
9 CPA claim may be established by showing that the defendant’s conduct has the  
10 capacity to deceive a substantial portion of the public. Id. at 785.

11           Plaintiffs submitted no evidence or argument in opposition to Mammoth’s  
12 motion for summary judgment on the CPA claim, electing instead to incorporate by  
13 reference the argument and evidence they provided in connection with their opposition  
14 to the Telekenex Defendants’ motion for summary judgment. See Resp. at 21, docket  
15 no. 178 (“Plaintiff has addressed [the CPA] argument in its Opposition to the  
16 Telekenex Defendants’ Motion For Partial Summary Judgment and hereby  
17 incorporates that response by reference here.”). In plaintiffs’ opposition to the  
18 Telekenex Defendants’ motion for summary judgment, however, plaintiffs relied  
19 exclusively on the alleged solicitation of SCI’s customers by Prudell, Radford, and  
20 Telekenex, to support their contention that the defendants’ conduct had the capacity to  
21 deceive a substantial portion of the public. Resp. at 20, docket no. 181. The conduct  
22 of Prudell, Radford, and Telekenex is not, however, imputable to Mammoth. Segal  
23  
24  
25  
26

1 Co. v. Amazon.com, 280 F. Supp. 2d 1229 ,1232 (W.D. Wash. 2003) (“In order to  
2 state a claim for relief under the CPA, plaintiffs must allege that acts by defendant  
3 were unfair or deceptive.”). Plaintiffs cite no evidence from which the Court can infer  
4 that any actions by Mammoth had the capacity to deceive a substantial portion of the  
5 public.<sup>5</sup> Accordingly, plaintiffs have failed to meet their burden, and the Court  
6 GRANTS Mammoth’s motion for summary judgment on plaintiffs’ CPA claim.  
7

8 b. Promissory Estoppel (Plaintiffs’ Tenth Cause of Action)  
9

10 To establish a claim for promissory estoppel, a plaintiff must prove (1) the  
11 existence of a promise; (2) that the promisor should reasonable expect would cause the  
12 promisee to change positions; (3) that actually causes the promisee to change  
13 positions; (4) justifiable reliance on the promise; and (5) injustice can only be avoided  
14 by enforcement of the promise. Flower v. T.R.A. Indus., Inc., 127 Wn. App. 13, 31,  
15 111 P.3d 1192 (2005). However, promissory estoppel implies a contract from a  
16 unilateral, otherwise unenforceable promise “and is wholly inapplicable where [an]  
17 actual contract exists.” Klinke v. Famous Recipe Fried Chicken, Inc., 94 Wn.2d 255,  
18 261 n.4, 616 P.2d 644 (1980) (citing Sacred Heart Farmers Coop. Elevator v. Johnson,  
19 305 Minn. 324, 232 N.W.2d 921, 923 n.1 (1975)).  
20  
21  
22  
23  
24

---

25 <sup>5</sup> Plaintiffs also rely solely on evidence relating to actions taken by Radford, Prudell,  
26 and Telekenex to support the public interest element of their CPA claim against  
Mammoth. Resp. at 21-22, docket no. 181.

1 In this case, it is undisputed that SCI and Mammoth entered into a written  
2 contract for the provision of Mammoth's services that provided, in relevant part, as  
3 follows:  
4

5 Customer shall be invoiced via postal mail each month in advance of  
6 Service, at Customer preference, for all amounts due and owing to  
7 Mammoth. Payments are due within thirty (30) days of invoice  
8 issuance.

9 . . .

10 The terms, representations, and warranties of this Agreement may only  
11 be waived by a written instrument executed by the Party waiving  
12 compliance. Except as otherwise provided herein, neither party's failure,  
13 at any time, to enforce any right or remedy available to it under this  
14 Agreement shall be construed as a continuing waiver of such right or a  
15 waiver of any other provision hereunder.

16 Worthen Decl., Ex. A at ¶¶ 3, docket no. 162. Despite the language in the contract  
17 requiring payment of amounts due and owing within thirty days of invoicing, plaintiffs  
18 contend that at a later date, Mammoth agreed to enter into an oral agreement (the  
19 "deferral agreement") described by SCI's director and officer Andrew Gold as  
20 follows:  
21

22 We agreed [that] \$120,000 in [Mammoth] receivables from 2008  
23 [would] be financed over the 12 months – as I recall, to be financed over  
24 the 12 months of 2009, and then to be repaid over either six or 12  
25 months in 2010.

26 Goldman Decl., Ex. 3 (docket no. 186-3 at 13-14). The oral agreement described by  
Mr. Gold is directly contrary to the written terms of the parties' services contract. It  
calls for payment of amounts due and owing in 2008, amounts that would otherwise be  
due in thirty days, more than twelve months late. Although the absence of a signed

1 writing is generally not dispositive of a claim for promissory estoppel, the existence of  
2 a contrary written agreement is dispositive of a claim for promissory estoppel. Klinke,  
3 94 Wn.2d at 261 n.4. Accordingly, plaintiffs’ promissory estoppel claim, which is  
4 based on Mammoth’s alleged oral agreement to defer payments, is barred by the  
5 existence and terms of the express written contract between the parties.  
6

7 Plaintiffs’ promissory estoppel claim is also barred because the evidence in the  
8 record indicates that Mammoth and SCI never reached agreement on the terms of the  
9 deferral agreement. It is undisputed that the deferral agreement was conditioned on  
10 SCI successfully negotiating a deferral agreement with Covad Communications. The  
11 record is devoid of any evidence that suggests that SCI and Covad ever finalized their  
12 agreement, and as such, Mammoth could not have promised to enter into the deferral  
13 agreement. The evidence submitted by plaintiffs suggests only that the parties were in  
14 active negotiation over a deferral agreement. See Martin Decl., docket no. 18-11 at  
15 93-95 (email between general counsel for Covad Communications and Straightshot  
16 conveying unexecuted drafts of a proposed deferral agreement); id., docket no. 18-11  
17 at 97-104 (miscellaneous email communications between SCI and Mammoth  
18 regarding negotiation of a potential deferral agreement); id., docket no. 27-23 at 21  
19 (defendant Worthen’s telephone records describing calls with SCI representatives  
20 regarding Covad and deferral agreement); Goldman Decl., Ex. 3, docket no. 186-3 at  
21 13-14 (describing potential terms of SCI’s deferral agreements with Covad and  
22 Mammoth); id. Ex. 16, docket no. 186-6 at 67-68 (noting that the parties had an “intent  
23  
24  
25  
26

1 to formalize” the proposed deferral agreement); id. Ex. 22, docket no. 186-8 at 191  
2 (noting that SCI informed Worthen that SCI had reached an agreement in principle  
3 with Covad, and that Mammoth would like to see a copy of that agreement). The  
4 Court concludes as a matter of law that Mammoth never promised to enter into the  
5 deferral agreement because the parties never agreed to the terms of the deferral  
6 agreement. Accordingly, the Court GRANTS Mammoth’s motion for summary  
7 judgment on plaintiffs’ claim for promissory estoppel.  
8

9  
10 2. The Court DENIES the Remainder of Mammoth’s Motion

11 The Court DENIES in part Mammoth’s motion on plaintiffs’ remaining claims  
12 and Mammoth’s affirmative motion for summary judgment on its claim for breach of  
13 contract. There are genuine issues of material fact in dispute that preclude summary  
14 judgment.  
15

16 **CONCLUSION**

17 For the foregoing reasons, the Court:

18 (1) DENIES the Telekenex Defendants’ motion for partial summary  
19 judgment, docket no. 150;

20 (2) DENIES Prudell and Radford’s motion for summary judgment, docket  
21 no. 152;

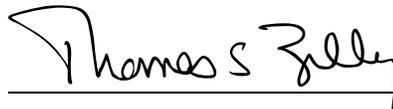
22 (3) STRIKES, in part, the Straightshot Parties’ motion for summary  
23 judgment as to Mammoth’s claims for fraudulent transfer and successor liability, as  
24 moot, GRANTS in part as to Mammoth’s claims for breach of contract and unjust  
25  
26

1 enrichment against Gold, Perry, Claritage and SRC, and DEFERS in part as to  
2 Mammoth's claim for unlawful distribution in violation of RCW 23B.14.070, docket  
3 no. 157; and  
4

5 (4) GRANTS, in part, Mammoth's motion for summary judgment as to  
6 plaintiffs' CPA and promissory estoppel claims, and DENIES as to the remainder of  
7 the motion, docket no. 161.

8 IT IS SO ORDERED.

9 DATED this 28th day of February, 2011.  
10

11  
12 

13 Thomas S. Zilly  
14 United States District Judge  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

# EXHIBIT 3

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STRAITSHOT RC, LLC, a Delaware corporation,

Plaintiff,

v.

TELEKENEX, INC., a Delaware corporation; MARK PRUDELL and JOY PRUDELL, husband and wife and the marital community composed thereof; MARK RADFORD and NIKKI RADFORD, husband and wife and the marital community composed thereof; JOSHUA SUMMERS and JULIA SUMMERS, husband and wife and the marital community composed thereof; ANTHONY ZABIT and JANE DOE ZABIT, husband and wife and the marital community composed thereof; BRANDON CHANEY and JANE DOE CHANEY, husband and wife and the marital community composed thereof; MAMMOTH NETWORKS, LLC and BRIAN WORTHEN and JANE DOE WORTHEN, husband and wife and the marital community composed thereof,

Defendants.

Case No. 2:10-cv-00268-TSZ

**MOTION FOR PROTECTIVE ORDER  
QUASHING SUBPOENA TO  
WELLINGTON FINANCIAL USA,  
INC.  
(FILED W/ASSOCIATED MOTION TO  
QUASH)**

***NOTE ON MOTION CALENDAR:  
Friday, October 15, 2010***

1	TELEKENEX, INC., a Delaware Corporation,
2	Third-Party Plaintiff,
3	v.
4	STRAITSHOT RC, LLC., a Delaware limited
5	liability company; STEPHEN PERRY and
6	JANE DOE PERRY, and the marital community
7	composed thereof; and ANDREW GOLD and
8	JANE DOE GOLD, and the marital community
	composed thereof,
	Third-Party Defendants.
9	MAMMOTH NETWORKS, LLC, a Wyoming
10	limited liability company,
11	Third-Party Plaintiff,
12	v.
13	CLARITAGE STRATEGY FUND, L.P., a
14	Cayman Islands limited partnership, and
15	STRAITSHOT RC, LLC, a Delaware limited
	liability company,
	Third-Party Defendants.

**I. RELIEF REQUESTED**

Defendant TELEKENEX, INC. (hereinafter, "Telekenex" or "Defendant") respectfully requests that this Court issue a Protective Order quashing the subpoena Plaintiff caused to be issued to Wellington Financial USA, Inc (hereafter, the "Wellington Subpoena.") Defendant will also file an associated Motion to Quash the Wellington Subpoena in the U.S. District Court, Central District of California, as that is the Court which issued the Subpoena. A true and correct copy of the Subpoena to Wellington Financial USA, the subject of this motion, is attached to the Declaration of Leigh Ann Collings Tift as Exhibit 1.

The subpoena at issue, which requests "Any and all DOCUMENTS that concern, RELATE or REFER to Telekenex, Inc." is intended to force the production of all of the documents created or obtained by Wellington in connection with debt financing provided to IXC,

1 Inc. and IXC Holdings, Inc. (collectively “IXC”)<sup>1</sup> more than eighteen months after Plaintiff  
2 Straitshot Communications, Inc. ceased operations.<sup>2</sup> The Wellington/IXC transaction has no  
3 relevance to the underlying lawsuit, and the Subpoena was issued solely for the purpose of  
4 improperly obtaining confidential financial information from IXC for a period of time unrelated  
5 to the claims stated in the lawsuit and/or to harass or burden IXC’s financing partner, Wellington  
6 Financial USA Inc.

7 Plaintiff cannot demonstrate that the confidential financial information sought by virtue  
8 of the Wellington Subpoena is relevant in any way to its claims in this action, all of which arose  
9 during the time period *before* Plaintiff ceased operations. Moreover, any speculative and  
10 attenuated potential benefit to Plaintiff from collecting this information is greatly outweighed by  
11 the harm to (a) Wellington, as the requested documents require disclosure of Wellington’s  
12 private, confidential, and proprietary processes regarding its due diligence and analysis in  
13 connection with the debt financing, and to (b) IXC, which has an interest in keeping its (current)  
14 sensitive financial information confidential. Therefore, this Court should enter a Protective  
15 Order quashing the subpoena pursuant to Rule 26. For the Court’s convenience, the substance of  
16 Defendants’ motion to quash pursuant to Civil Rule 45 is also addressed in this motion.

17 Telekenex’s counsel has conferred with Plaintiff’s counsel regarding this motion but was  
18 unable to resolve this dispute.

---

21 <sup>1</sup> The prior legal name of IXC, Inc. is Telekenex IXC, Inc. Telekenex IXC operated as a separate legal entity from  
22 Telekenex, Inc. although IXC Holdings, Inc. acquired substantially all of the assets of Telekenex, Inc. in August  
23 2010.

24 <sup>2</sup> Straitshot Communications, Inc (“SCI”) ceased doing business in Washington in February 2009, and was  
25 dissolved in August 2009. *See*, Exhibit 3, Decl. of Tift. Shortly before the dissolution, SCI’s “sole creditor,” the  
26 Claritage Strategy Fund, declared SCI to be in default of its obligations under a Loan and Security Agreement and  
claimed the “collateral” for the Agreement—which consisted principally of this lawsuit. *See*, Exhibit 4, Decl. of  
Tift. Thereafter, the Claritage Strategy Fund assigned all rights to the collateral and the Loan and Security  
Agreement to Straitshot RC, LLC. Straitshot RC’s sole member is Stephen Perry, who is also the General Partner of  
Claritage. Straitshot RC then petitioned, and was allowed, to substitute for SCI in this litigation. *See*, Exhibit 5,  
Decl. of Tift.

1 **II. FACTUAL BACKGROUND**

2 None of Plaintiff's claims in the underlying lawsuit have any connection whatsoever to  
3 IXC's debt financing with Wellington Financial well over a year after the failure of Plaintiff's  
4 business. Specifically, Plaintiff's allegations are that:

- 5 • Certain of SCI's former sales employees violated the terms of their noncompete  
6 agreements after they became employed with Telekenex in January 2009;
- 7 • Certain of SCI's former employees breached their duty of loyalty to SCI by virtue  
8 of behavior which took place in January and/or February 2009;
- 9 • the Defendants interfered with contractual relationships between SCI and its  
10 customers in the period December 2008-March 2009;
- 11 • the Telekenex Defendants misappropriated SCI trade secrets in the period January  
12 2009-March 2009;
- 13 • the Telekenex Defendants (except Summers) violated the Lanham Act by virtue  
14 of conduct which is alleged to have occurred in January-March 2009;
- 15 • The Telekenex Defendants engaged in conduct which violated the RICO statutes;  
16 and
- 17 • the Telekenex Defendants violated the Washington Consumer Protection Act, the  
18 RICO statutes, and Washington's Criminal Profiteering Act by virtue of conduct  
19 which is alleged to have occurred in January-March 2009.

20 All of Plaintiff's claims are disputed, and motions to dismiss are pending. Importantly, for  
21 purposes of this motion, all of the allegations in Plaintiff's complaint occurred in connection  
22 with disputed business transactions with Telekenex (not IXC, the participant in the Wellington  
23 Financial transaction).

24 The financing transaction between IXC and Wellington Financial closed in August of  
25 2010, more than eighteen months after SCI ceased doing business, and one year after the  
26 corporation dissolved. *See*, Declaration of Sundermeier; Declaration of Tift. Other than

1 maintaining the instant lawsuit, there is no allegation that SCI (or Straitshot RC) was engaged in  
2 any kind of viable business at the time of the financing transaction with Wellington Financial nor  
3 is SCI even claiming it was harmed by Telekenex during this period of time.

4 The Wellington Subpoena is grossly overbroad. It literally requires production of any  
5 document that says “Telekenex” on it or relates in any way to Telekenex. Further, it requires  
6 disclosure by Wellington Financial of confidential and proprietary credit underwriting and loan  
7 structuring processes, privileged work product, and attorney client communications. *See*,  
8 Sundermeier Decl.

### 9 III. ARGUMENT AND AUTHORITY

#### 10 A. Telekenex’s Motion for a Protective Order Should be Granted if the Court 11 Chooses Not to Quash the Subpoena Outright.

12 Federal Rule of Civil Procedure 26(c) empowers the Court to issue an order to protect a  
13 party from annoyance, embarrassment, oppression, or undue burden or expense. “Rule 26 also  
14 specifies that all discovery is subject to the limitations imposed by Rule 26(b)(2)(i), which  
15 requires that discovery methods be limited where the discovery sought is unreasonably  
16 cumulative or duplicative, is obtainable from some source more convenient, less burdensome, or  
17 less expensive..., or the burden or expense of the proposed discovery outweighs its likely benefit,  
18 taking into account the needs of the case..., the importance of the issues at stake in the litigation,  
19 and the importance of the proposed discovery in resolving the issues.” *Gonzales v. Google*, 234  
20 F.R.D. 674, 680 (N.D. Cal 2006)(internal punctuation omitted).

21 Thus, the Federal Rules place meaningful limitations on discovery’s appropriate scope,  
22 protecting parties from unnecessary searches into irrelevant information. *Micro Motion, Inc. v.*  
23 *Kane Steel Co.*, 894 F.2d 1318, 1323 (Fed. Cir. 1990) (“Discovery may not be had regarding a  
24 matter which is not ‘relevant to the subject matter involved in the pending action.’ . . . Even if  
25 relevant, discovery is not permitted where no need is shown, or compliance would be unduly  
26 burdensome, or where harm to the person from whom discovery is sought outweighs the need of

1 the person seeking discovery.”). District courts enjoy broad discretion to determine relevancy  
2 for discovery purposes, including the authority to limit discovery to prevent its abuse. *Hallett v.*  
3 *Morgan*, 296 F.3d 732, 751 (9th Cir. 2002); Fed. R. Civ. P. 26(b)(2). Where there is a lack of  
4 relevance, the Court may issue a protective order. *See e.g., In re: Remec, Inc. Sec. Litig.*, 2008  
5 U.S. Dist. LEXIS 47412, \*4 (S.D. Cal., May 30, 2008)(“A party can move for a protective order  
6 in regard to a subpoena issued to a nonparty if it believes its own interests are jeopardized by  
7 discovery sought from a third party and has standing under Rule 26(c) to seek a protective order  
8 regarding subpoenas issued to nonparties which seek irrelevant information”). In that regard, it  
9 should be noted that “[c]onfidential commercial information warrants special protection” under  
10 Rule 26. *Micro Motion*, 894 F.2d 1318 at 1323.

11 Further, Courts are willing to limit discovery when a discovery device is overly broad or  
12 seeks information only tangentially related to the central issues of the case. *Compaq Computer*  
13 *Corp. v. Packard Bell Electronics, Inc.*, 163 F.R.D. 329, 335-36 (N.D. Cal. 1995) (“if sought-  
14 after documents are not relevant nor calculated to lead to discovery of admissible evidence, then  
15 any burden whatsoever imposed upon [a nonparty] would be by definition ‘undue’”). A court  
16 may determine whether a subpoena is overbroad by reviewing the language of the request itself.  
17 Where a subpoena uses language that has no meaningful limitation, it is overbroad on its face.  
18 For example, subpoenas are generally considered overbroad where they request “any documents”  
19 that “relate to” a particular topic. *See, Premier v. Corestaff Services, L.P.*, 232 F.R.D. 692 (M.D.  
20 Fla. 2005) (finding “[documents] which regard or reference” facially overbroad); *Stewart v.*  
21 *Mitchell Transport*, 2001 U.S. Dist. LEXIS 12958, \*12 (D. Kan. 2001)(finding “[documents]  
22 regarding” overbroad); see also *Bradley v. Val-Mejias*, 2001 U.S. Dist. LEXIS 25278, \*18 (D.  
23 Kan., 2001)(“use of the term ‘pertaining to,’ often makes a discovery request overly broad and  
24 unduly burdensome on its face”); *Barrington v. Mortgage IT, Inc.*, 2007 U.S. Dist. LEXIS 90555  
25 at \*16 (S.D. Fla. 2007)(subpoena seeking “any and all documents, files and records, reflecting or  
26

1 relating to the employment” is overly broad on its face); see also *In Re: Remec, Inc. Securities*  
2 *Litigation*, 2008 U.S. Dist. LEXIS 47412, \*8-15 (S.D. Cal. 2008) (granting protective order for  
3 subpoena to the defendant’s financial advisor requesting, for example, documents used in  
4 connection with its “engagement or retention” because of the over breadth of the request).

5 Here, Plaintiff fails to state its request with any particularity whatsoever. Rather, it seeks  
6 “Any and all DOCUMENTS that concern, RELATE or REFER to Telekenex, Inc.” The request  
7 is overbroad on its face, and Telekenex should be protected from this objectionable fishing  
8 expedition into its confidential financial information.

9 Further, even if the subpoena requested relevant documents, which it does not, the  
10 balance of the interests of the parties favors a protective order quashing the Wellington  
11 Subpoena. If Plaintiff seeks financial information regarding Telekenex during the relevant time  
12 period, it is free to request such information from Telekenex, without implicating Wellington’s  
13 sensitive and proprietary business processes. The relevant information in this case pertains to the  
14 conduct of Telekenex and certain of its employees during the time that Plaintiff was an actual,  
15 viable company.

16 Both the Federal Rules and case law make clear that the right to subpoena information is  
17 neither unfettered nor absolute. Here, in light of the lack of any relevancy or need for the  
18 information requested by the Wellington Subpoena, any attempt to obtain these documents is  
19 unduly burdensome.

20 **B. Telekenex’s Motion to Quash the Subpoena Should be Granted as the**  
21 **Subpoena Is Overbroad As To Time, Scope, And Information Sought**

22 Pursuant to Federal Rule of Civil Procedure 45(c)(3)(A)(iv), a party may move to quash a  
23 subpoena if it subjects a person to undue burden.<sup>3</sup> The Wellington Subpoena poses an undue

24 <sup>3</sup> Telekenex anticipates that Plaintiff will argue that Telekenex does not have standing to quash the Wellington  
25 Subpoena. This is demonstrably untrue, as Plaintiff’s subpoena seeks the production of Telekenex’s confidential  
26 financial information. A party has standing to seek to quash a subpoena served on a third party “where the plaintiff  
asserts a legitimate privacy interest in the materials sought.” *Abu v. Best Western Airport Executel*, 2009 U.S. Dist.  
LEXIS 12626 (W.D. Wash., Feb. 5, 2009); *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 636 (C.D. Cal. 2005).

1 burden, as it is overbroad and does not “tailor the information request to the immediate needs of  
2 the case.” *See, Mattel, Inc. v. Walking Mountain Prods.*, 353 F.3d 792, 813 (9th Cir.  
3 2003)(holding subpoenas properly quashed where found to be overbroad). However, as the  
4 subpoena issued from the Central District of California, Defendants expect that the Motion to  
5 Quash must be lodged there as well. The grounds for the motion to quash are as follows:

6 **1. The Wellington Subpoena Seeks Irrelevant Documents.**

7 “Although irrelevance is not among the litany of enumerated reasons for quashing a  
8 subpoena found in Rule 45, courts have incorporated relevance as a factor when determining  
9 motions to quash a subpoena.” *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 637 (C.D. Cal. 2005);  
10 *Anderson v. Abercrombie and Fitch Stores, Inc.*, 2007 U.S. Dist. LEXIS 47795, \*5 (S.D. Cal.,  
11 July 7, 2007). This is because “under Rule 45(c)(3)(A), an evaluation of undue burden requires  
12 the court to weigh the burden to the subpoenaed party against the value of the information to the  
13 serving party.” *Id.* at 637 (internal citations omitted). In doing so, the court must consider “such  
14 factors as relevance, the need of the party for the documents, the breadth of the document  
15 request, the time period covered by it, the particularity with which the documents are described  
16 and the burden imposed.” *Id.* Indeed, District Courts in this Circuit have unequivocally held  
17 that subpoenas issued under Rule 45 “are subject to the relevance requirements set forth in Rule  
18 26(b).” *See, e.g., Anderson* 2007 U.S. Dist. LEXIS 47795 at \*4.

19 The Wellington Subpoena should be quashed for seeking irrelevant information for two  
20 reasons. First, the subpoena is overbroad as to time. The relevant time period of the underlying  
21 lawsuit necessarily terminated when SCI ceased operations in February 2009. Plaintiff has no  
22 need for IXC’s confidential financial information from the second half of 2009, much less 2010,  
23 the time of the Wellington/IXC transaction.

24 **2. The Wellington Subpoena is Overbroad.**

25 The documents sought by the Wellington Subpoena are vastly overbroad as to subject  
26

1 matter. The Subpoena seeks “Any and all DOCUMENTS that concern, RELATE or REFER to  
2 Telekenex, Inc.,” which encompasses documents that have no connection to any of the  
3 allegations in the underlying lawsuit, and are confidential and proprietary to Telekenex, IXC and  
4 Wellington. For example, the subpoena encompasses documents concerning Wellington’s credit  
5 underwriting and loan structuring procedures, which are inextricably intertwined with its private  
6 and confidential analysis of information regarding IXC.

7 **IV. CONCLUSION**

8 Because the Wellington Subpoena seeks documents that are not relevant to the  
9 underlying lawsuit, is not reasonably limited in scope to an appropriate time frame, and is  
10 grossly overbroad, Telekenex’s Motion to for a Protective Order should be granted. Defendant  
11 intends to file a companion motion to this, asking the U.S. District Court for the Central District  
12 of California quash the subpoena on the grounds enumerated above.

13  
14 Dated: October 7, 2010

15  
16 *s/ Leigh Ann Collings Tift*

17 Leigh Ann Collings Tift, WSBA #11776  
18 LITTLER MENDELSON, P.C.  
19 One Union Square  
20 600 University Street, Suite 3200  
Seattle, WA 98101.3122  
Phone: 206.623.3300  
Fax: 206.447.6965  
E-Mail: [ltift@littler.com](mailto:ltift@littler.com)

21 Attorneys for Defendants  
22 Telekenex, Inc., a Delaware Corporation,  
23 Joshua Summers and Julia Summers, husband  
24 and wife and the marital community composed  
25 thereof; Anthony Zabit and Jane Doe Zabit,  
26 husband and wife and the marital community  
composed thereof; and Brandon Chaney and  
Jane Doe Chaney, husband and wife, and the  
marital community composed thereof.

**CERTIFICATE OF SERVICE**

I hereby certify that on October 7, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Jessica L. Goldman  
Lawrence Carl Locker  
Summit Law Group  
315 Fifth Avenue South, Suite 1000  
Seattle, WA 98104  
Phone: 206.676.7000  
Fax: 206.676.7001  
Email: [jessicag@summitlaw.com](mailto:jessicag@summitlaw.com)  
[larryl@summitlaw.com](mailto:larryl@summitlaw.com)

A Chad Allred  
Ellis Li & McKinstry  
Market Place Tower  
2025 First Avenue, Penthouse A  
Seattle, WA 98121  
Phone: 206.682.0565  
Fax: 206.652.1052  
Email: [callred@elmalw.com](mailto:callred@elmalw.com)

**ATTORNEYS FOR MAMMOTH NETWORKS LLC**

Jonathan Massey, *pro hac vice*  
Leonard Gail, *pro hac vice*  
Massey & Gail LLP  
50 East Washington Street. Suite 400  
Chicago, IL 60602  
Phone: 312.283.1590  
Fax: 312-379-0467  
Email: [jmassey@masseygail.com](mailto:jmassey@masseygail.com)  
[lgail@masseygail.com](mailto:lgail@masseygail.com)

Kenneth Joel Diamond  
Winterbauer & Diamond PLLC  
1200 5th Avenue, Suite 1700  
Seattle, WA 98101-3147  
Phone: 206.676.8440  
Fax: 206.676.8441  
Email: [ken@winterbauerdiamond.com](mailto:ken@winterbauerdiamond.com)

**ATTORNEYS FOR PLAINTIFF**

**ATTORNEYS FOR DEFENDANTS MARK AND JOY PRUDELL AND MARK AND NIKKI RADFORD**

and I hereby certify that I have mailed by the United States Postal Service the foregoing document to the following non CM/ECF participants:

N/A

Dated: October 7, 2010

s/ Cheryl A. Phillips  
Cheryl A. Phillips  
[cphillips@littler.com](mailto:cphillips@littler.com)

**LITTLER MENDELSON, P.C.**

Firmwide:97853423.3 066331.1001

# EXHIBIT 4

Technology Law Group, L.L.C.<sup>SM</sup>

5335 Wisconsin Avenue, N.W.  
Suite 440  
Washington, D.C. 20015

202-895-1707  
FACSIMILE 202-478-5074  
EMAIL gtaylor@tlgdc.com

**GRANTED**

DEC 10 2010

COMPETITION POLICY DIVISION  
WIRELINE COMPETITION BUREAU

*William A. Deves*

November 16, 2010

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room TW-A325  
Washington, DC 20554

Re: *CC Docket No. 00-257*  
Request for Permission to Withdraw Application

Dear Secretary Dortch:

This firm represents IXC Holdings, Inc. ("IXC"), and Telekenex, Inc. ("Telekenex"), in the instant matter before the Federal Communications Commission ("Commission"). The parties have filed a joint application for Commission approval of the transfer of certain Telekenex assets, including customers, to IXC pursuant to CC Docket No. 00-257. However, the contemplated transaction is *pro forma* and thus, the application was submitted in error.

Indeed, 47 C.F.R. 63.03(d)(1) provides that "Any party that would be a domestic common carrier under section 214 of the Communications Act of 1934, as amended, is authorized to undertake any corporate restructuring, reorganization or liquidation of internal business operations that does not result in a change in ultimate ownership or control of the carrier's lines or authorization to operate, including transfer in bankruptcy proceedings to a trustee or to the carrier itself as debtor-in-possession."

Telekenex, of which BPB, LLC owns 64.8%, seeks to transfer its ownership to IXC Holdings, Inc. IXC Holdings, Inc. is wholly-owned by IXC, Inc. IXC Inc. is wholly-owned by BPB, LLC. Accordingly the transfer of the Telekenex assets will not "result in a change in the ultimate ownership or control of the Telekenex lines or authorization to operate" because it is now controlled by BPB, LLC, and will still be controlled by BPB, LLC after the transaction.

Accordingly, through counsel, Telekenex asks that its application for Commission approval be withdrawn.

Technology Law Group, LLC<sup>SM</sup>

Marlene H. Dortch, Secretary  
Federal Communications Commission  
November 16, 2010

Page 2 of 2

Please direct any and all inquires to the undersigned.

Respectfully submitted,  
**TECHNOLOGY LAW GROUP, LLC**

/s/ Greg L. Taylor

Neil S. Ende, Esq.

Greg L. Taylor, Esq.

5335 Wisconsin Ave., N.W.

Suite 440

Washington, D.C., 20015

*Counsel to Telekenex, Inc., and IXC  
Holdings, Inc.*

# EXHIBIT 5

June 3, 2010

John L. Clark, Attorney at Law

Attn: PAL Coordinator  
Communications Division  
Public Utilities Commission  
Third Floor  
505 Van Ness Avenue  
San Francisco, CA 94102

**Re: Advice Letter No. 71 of Telekenex, Inc. (U-6647-C)**

Pursuant to General Order ("G.O.") 96-B, Decision ("D.") 04-10-038, D. 97-06-096, and D. 94-05-051, Telekenex, Inc. ("Telekenex") hereby transmits for filing one original hard copy and one accompanying compact disc of its Advice Letter No. 71. The purpose of this advice letter is to notify the Commission of a proposed transfer of Telekenex's assets, including its customer base and operating authorities, to IXC Holdings, Inc. ("IXC Holdings"). As is explained below, this transfer will not result in any change in actual control or new entry.

Telekenex is controlled by BPB, LLC ("BPB"), which owns 65% of Telekenex's shares. BPB is owned by two individuals, Anthony Zabit and Brandon Chaney, who are Telekenex' founders and principal management team. The remaining 35% interest in Telekenex is divided equally (to the nearest whole percentage) between two investors, Walden VC and Altos Ventures.

IXC Holdings is an existing, wholly-owned, indirect subsidiary of BPB. Thus, the effect of the proposed transfer will simply be to move the operations currently conducted by Telekenex and its assets into a company that is under the complete ownership and control of Messrs. Zabit and Chaney. There will be no change in day-to-day control and management, nor any change in actual legal control and ownership. Moreover, following the transfer, IXC Holdings will conduct business under the name "Telekenex," without any change in the rates, terms, or conditions of service currently enjoyed by Telekenex customers.

In accordance with the requirements of G.O. 96-B, D. 04-10-038, D. 97-06-096, and D. 94-05-051, Telekenex advises the Commission as follows:

1. Pursuant to an agreement among Telekenex shareholders, Telekenex's assets, including its operating authorities and customer base, will be transferred to IXC Holdings, and will be under 100% indirect ownership and control of Telekenex's current majority shareholder, BPB.

2. Following the transfer, IXC Holdings will continue to provide service to the transferred customers at the same rates, terms, and conditions that currently apply to their

services. Notice of the transfer has been provided to all affected customers concurrently with the filing of this advice letter. A copy of the notice is attached hereto.

3. This transaction does not have the potential to result in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment pursuant to the California Environmental Quality Act (CEQA) Guideline 15378.

4. No legal complaints have been decided against Telekenex or IXC Holdings in any court in California or any other state, involving an alleged violation of § 17000 et seq. of the California Business and Professions Code, any misrepresentation to consumers, or any similar violations. There is a pending civil complaint brought by a customer, Georgiou Studio, Inc., against Telekenex in San Francisco Superior Court, Case No CGC-09-487682. Georgiou alleges that Telekenex wrongfully terminated service for nonpayment; but Telekenex believes the case has no merit. It is set for arbitration in summer 2010. A second case, brought by Straitshot Communications against Telekenex, is pending in King County, Washington Superior Court, Case No. 09-2-06611-6 SEA. This case involves allegations that Telekenex interfered with Straitshot's economic relationships by offering service to Straitshot's customers during a period when portions of Straitshot's network were being shut off by other service providers for non-payment. Telekenex believes this is a frivolous lawsuit.

5. Telekenex is submitting, as an attachment to this advice letter, pro forma financial statements showing the effect of the proposed transfer. These statements are being submitted under seal pursuant to General Order 66-C.

A copy of this advice letter is being served on the Director of the Commission's Consumer Protection and Safety Division as well as all other persons who have previously requested to be served with copies of Telekenex's advice letters. Telekenex will also serve a copy of this advice letter on any person requesting the same.

Anyone may object to this advice letter, which was filed on June 3, 2010, by sending a written protest to: Telecommunications Advice Letter Coordinator, Communications Division, 505 Van Ness Ave., 3rd Floor, San Francisco, CA 94102-3298. The protest must state specifically the grounds on which it is based. The protest must be received by the Telecommunications Advice Letter Coordinator no later than 20 days after the date that the advice letter was filed. If you have e-mail capability, you must also e-mail a copy to the Communications Division at [TD\\_PAL@cpuc.ca.gov](mailto:TD_PAL@cpuc.ca.gov).

On or before the day that the protest is sent to the Telecommunications Advice Letter Coordinator, the protestant must send a copy of the protest to:

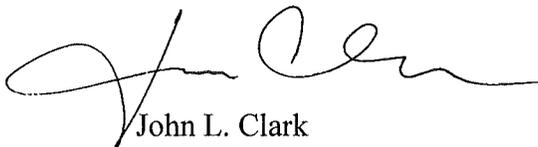
Attn: PAL Coordinator  
June 3, 2010  
Page 3.

John L. Clark  
Goodin, MacBride, Squeri,  
Day & Lamprey, LLP  
505 Sansome Street, Suite 900  
San Francisco, CA 94111  
Fax: 415-398-4321  
E-mail: [jclark@goodinmacbride.com](mailto:jclark@goodinmacbride.com)

To obtain information about the Commission's procedures for advice letters and protests, go to the Commission's Internet site ([www.cpuc.ca.gov](http://www.cpuc.ca.gov)) and look for document links to General Order 96-B.

If there are any questions regarding this filing, please contact the undersigned.  
Thank you for your assistance in this matter.

Very truly yours,



John L. Clark

3433/002/X119655.v1



---

## NOTICE OF TRANSFER OF TELEPHONE SERVICE

June 1, 2010

Dear Customer:

Telekenex, Inc ("Telekenex") currently provides your local and/or long distance service. Telekenex will be transferring its assets to IXC Holdings, Inc. ("IXC"), the near future. As a result of this transaction, IXC will be the provider of local and/or long distance services to Telekenex customers.

This transfer will not affect your rates or the terms and conditions of your service. IXC will be doing business as Telekenex so the company name will remain unchanged on your monthly invoice. Furthermore, the employees, business address and service contact numbers will also not change during this transition. You will be able to contact IXC dba Telekenex after this transfer in the exact same manner as before the transfer.

Subject to obtaining state and federal regulatory approvals, we anticipate that the transfer will occur on or about July 6, 2010. Unless you have begun using a service provider other than Telekenex prior to this date, IXC will become your local and/or long distance service provider following the transfer. If Telekenex is not your local service provider, the transfer to IXC will not impact your local carrier selection.

The rates you currently pay for service, as well as your terms and conditions of service, will not change as a result of the transfer. If there is any future change in rates or the terms and conditions of service, you will be notified by IXC in accordance with applicable provisions of law and your service agreement.

Except in the event of the existence of a contract for your telecommunications service, you have the right to subscribe to local and long distance service from any service provider you wish. This decision is entirely up to you, and you may choose to switch to another carrier either before or after this change occurs. IXC values your continued business and will gladly respond to any questions or complaints you may have about your service either prior to or during the change.

There will be no charge to you for the transfer from Telekenex to IXC. However, IXC will not be responsible for any charges that are imposed if you switch to another service provider.

If you have any questions regarding this notice, please contact us either at 800-284-9519 or 800 S. Michigan Street Seattle, WA 98708.

Sincerely,

**Telekenex, Inc.**  
**IXC Holdings, Inc.**

# EXHIBIT 6

**T E L E C O M**  
**PROFESSIONALS, INC.**

Judith A. Riley, J.D.

5909 Northwest Expressway, Suite 101  
Oklahoma City, OK 73132

September 10, 2010

VIA UPS OVERNIGHT DELIVERY

Public Utilities Commission of Nevada  
Attn: Commission Secretary, Ms. Crystal Jackson  
1150 E. William Street  
Carson City, Nevada 89701-3109  
(775) 684-6101

RECEIVED-PUBLIC  
UTILITIES COMMISSION  
OF NEVADA-CARSON CITY  
2010 SEP 14 AM 11:14

RE: Joint Application of IXC Holdings, Inc. and Telekenex, Inc.  
Transfer of Certificate

Dear Ms. Jackson:

Enclosed please find the original Joint Application of IXC Holdings, Inc. and Telekenex, Inc. for Transfer of Certificate and Informational Notice of Asset Transfer.

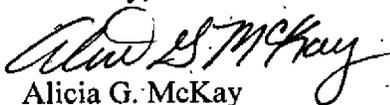
The financial information will be sent under seal, pursuant to NAC 703.5274, once a Docket number has been assigned. Neither IXC Holdings, Inc. nor Telekenex, Inc. are publicly traded company and do not file financial statements with the SEC. Public disclosure of the financial information would cause undue harm to both companies and would prove detrimental to the any competitive position in the marketplace.

We are requesting at this time that the Commission destroy this financial information one (1) year from the date of receipt by the Commission. It is my understanding that we will receive a Proprietary Agreement from the Commission, and thereafter we will provide the Commission with a second set of financial information under seal.

Please acknowledge this filing by file-stamping the duplicate letter and returning in the self addressed, postage-paid envelope enclosed. *MA 9/14/10*

Should you have any questions or require additional information, please do not hesitate to contact me at (405) 755-8177, extension 25.

Sincerely,



Alicia G. McKay  
Regulatory Agent

/am

Enclosures

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

In the matter of the Joint Application of Telekenex, Inc. \_\_\_\_\_)  
(a Delaware Corporation) and IXC Holdings, Inc. (a Delaware \_\_\_\_\_)  
Corporation) d/b/a Telekenex for approval of the Transfer \_\_\_\_\_)  
of Certificate of Public Convenience and Necessity, \_\_\_\_\_)  
CPC 2799, Sub 2; and Informational Notice Regarding the \_\_\_\_\_)  
Transfer of Assets of a Telecommunications Company \_\_\_\_\_)

Docket NO.: 10- \_\_\_\_\_

**JOINT APPLICATION OF TELECOMMUNICATIONS COMPANIES FOR  
TRANSFER OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

**AND**

**INFORMATIONAL NOTICE REGARDING TRANSFER OF ASSETS OF A  
TELECOMMUNICATIONS COMPANY**

Telekenex, Inc. ("Telekenex") and IXC Holdings, Inc. d/b/a Telekenex ("IXC") (collectively "Joint Applicants") have filed a joint application and informational notice with the Public Utilities Commission of Nevada ("Commission") in which the Joint Applicants seek Commission approval to transfer Certificate of Public Convenience and Necessity ("CPC") 2799, sub 2, Docket No. 08-10003, from Telekenex to IXC; and the Joint Applicants have provided an Informational Notice to the Commission regarding the transfer of certain assets and the customer base to IXC; and claimed exemption from the requirement to obtain Commission approval of the transactions involved pursuant to NRS 704.329(6)(b). Joint Applicants have also requested expedited treatment without hearing, pursuant to NRS 703.320(3).

Joint Applicants state that they have met the requirements of the NRS and NAC regarding the transfer as follows:

**I. IDENTIFICATION OF JOINT APPLICANTS**

Telekenex, Inc. currently holds CPC 2799, sub 2 to operate as a competitive supplier of telecommunications service within the State of Nevada.

IXC Holdings, Inc. d/b/a Telekenex does not currently hold a Certificate of Public Convenience and Necessity to offer competitive telecommunications service in the State of Nevada. However, IXC would become the holder of CPC 2799, sub 2 if the Joint Application to transfer the Certificate is granted.

The Joint Applicants state the transfer of the CPC from Telekenex to IXC would not affect rates, terms, or conditions of service, nor have an adverse affect on existing customers or competition in the State of Nevada.

Upon approval of the CPC transfer to IXC, certain other of the Telekenex assets, including its customer base, would be transferred to IXC. IXC Holdings, Inc. d/b/a Telekenex' address and contact information is as follows:

800 South Michigan Street  
Seattle, WA 98108  
Phone: (800) 284-9519

**II. COMMUNICATIONS AND CORRESPONDENCE**

Correspondence and communications regarding this application should be directed to Joint Applicants Representative:

Judith A. Riley  
Telecom Professionals, Inc.  
5909 NW Expressway, Suite 101  
Oklahoma City, OK 73132-5103  
Phone: (405) 755-8177  
Facsimile: (405) 755-8377  
Email: [jriley@telecompliance.net](mailto:jriley@telecompliance.net)

### **III. DESCRIPTION OF TRANSFER**

Telekenex is controlled by BPB, LLC (“BPB”), which owns 65% of Telekenex shares. BPB is owned by Mr. Anthony Zabit and Mr. Brandon Chaney, the founders and management team of BPB and Telekenex. The remaining 35% interest in Telekenex is held equally, to the nearest whole percentage, by two investors, Walden VC and Altos Ventures.

IXC Holdings, Inc. is an existing, wholly-owned, indirect subsidiary of BPB, thus, the effect of the proposed CPC transfer is the movement of Telekenex operations, assets and customer base, to 100% complete control of BPB, LLC. Should the Commission approve the transfer of CPC 2799, sub 2, IXC Holdings, Inc. would become the holder of this Certificate. There would be no change in the day to day control or management team.

An organizational description of the relationship between Telekenex and IXC prior to the proposed transfer and the resulting organizational relationship after the proposed transfer is attached as **Exhibit A**.

Joint Applicants state that there will be no change in day to day control or management nor any change in actual legal control, and; that IXC Holdings, Inc. meets all Commission requirements for the issuance of a CPCN to operate as a competitive supplier of telecommunications services in the State of Nevada.

### **IV. QUALIFICATIONS OF IXC HOLDINGS, INC.**

In support of this application, Joint Applicants submit the following information and exhibits:

- a. **Qualification to Conduct Business:** Attached hereto as **Exhibit B** is a copy of the certificate issued by the Secretary of State of the State of Nevada acknowledging IXC Holdings, Inc. authority to do business in the State of Nevada.
- b. **Financial Statements:** Attached as **Exhibit C**, is a public redacted copy of the Joint Applicant, IXC Holdings, Inc. Pro Forma financial statements; and submitted under seal, is a confidential copy of IXC Holdings, Inc. Pro Forma financial statements.
- c. **Service Area:** Attached as **Exhibit D**, is a statement indicating the areas to be served by the Applicant, including an identification of the certificate service areas served by a small scale provider of last resort.
- d. **Services Offered:** Attached as **Exhibit E**, is a detailed description of the services to be offered.
- e. **Management and Technical Capability:** Attached as **Exhibit F**, are the resumes of the management team. No legal control or management changes are occurring with this proposed transfer.
- f. **Performance Bond:** IXC Holdings, Inc. is exempt from paying a performance bond because it will not offer prepaid service nor require customer deposits or advance payments.
- g. **Customer Service Contact:** Customers may contact IXC Holdings, Inc. regarding the establishment of service, complaints, and queries about service and billing and

all other customer service matters at the following toll-free number:  
1-800-284-9519.

- h. Assessment of TDD Surcharge Issues:** IXC Holdings, Inc. Intends to continue offering the same services currently offered by Telekenex, Inc., specifically, Local access telecommunications service. As such, IXC will comply with the legislatively - mandated surcharge for the program to provide devices for telecommunications to persons with impaired speech or hearing, in accordance with NRS 426.295 and NAC 707.020. (Program is also known as Telecommunications Display Devices or TDDs).
- i. Fictitious Name(s):** IXC Holdings, Inc. will conduct business under the name, Telekenex. Pursuant to N.R.S. 602.010, the Applicant will file, within 30 days, a notice with each county and/or city in which it is currently or intends to do business.
- j. Customer Notice:** Attached as **Exhibit G**, is a copy of the notice sent to current customers of Telekenex, Inc., which notifies the customers of the transaction.
- k. Public Notice:** Attached hereto as **Exhibit H**, is a draft public notice.

**V. Request for Expedited Treatment**

The Joint Applicants assert that Commission approval of the asset and customer base transfer is not required pursuant to the exemptions set forth in N.R.S. 704.329(6)(b), inasmuch as less than ten percent (10%) of Telekenex' gross operating revenue was derived from intrastate telecommunications services provided to Nevada retail customers. The Joint Applicants, do however, seek Commission acknowledgement of the intended asset transfer.

Pursuant to N.R.S. 703.320(3), the Joint Applicants respectfully request the Commission

dispense with any hearings, and allow expedited treatment of this transaction. The result of this transaction does not include any change in day to day control or management; or any change in actual legal control; and therefore no purpose would be served to delay the transaction. Expedited treatment would also be in the best interest of the current customer base resulting in no interruption in service.

All of the exhibits attached hereto are in accordance with the applicable sections of the NAC Chapters 703 and 704 containing the Rules of Practice and Procedure before the Public Utilities Commission of Nevada.

**WHEREFORE**, Joint Applicants, Telekenex, Inc. and IXC Holdings, Inc. d/b/a Telekenex, respectfully request that the Public Utilities Commission of Nevada enter an order approving the transfer of Certificate of Public Convenience and Necessity CPC 2799, sub 2, and therefore the assets, including the customer base of the aforementioned.

DATED at 5909 NW Expressway, OKC 73132 \_\_\_ this 10th day of September, 2010.

**Regulatory Consultant for Joint Applicants**

Judith A. Riley  
Signature

Judith A. Riley

**Printed Name & Title**

5909 NW Expressway, Suite 101

**Address**

Oklahoma City, OK 73132

**City, State, Zip**

(405) 755-8177

**Telephone**

(405) 755-8377

**Fax**

**Signature of Telekenex, Inc.**

Anthony Zabit  
Signature

Anthony Zabit, President

**Printed Name and Title**

3321 20th Avenue

**Address**

San Francisco, CA 94410

**City, State, Zip**

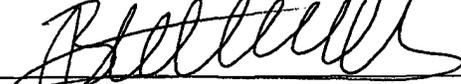
(415) 287-1200

**Telephone**

(415) 276-8294

**Fax**

**Signature of IXC Holdings, Inc.**



**Signature**

**Brandon Chaney, Chief Executive Officer**

**Printed Name and Title**

**800 South Michigan Street**

**Address**

**Seattle, Washington 98108**

**City, State, Zip**

**(800) 284-9519**

**Telephone**

OATH

State of California )  
County of San Francisco )

Anthony Zabit, being duly sworn, states that he files this application as President of Telekenex, Inc.; that in such capacity, he is qualified and authorized to file and verify such application; that he has carefully examined all the statements and matters contained in the application; and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information and belief. Affiant further states that the application is made in good faith, with the intention of presenting evidence in support thereof in every particular.

*Anthony Z*      *Mardy Garcia*  
Signature of Affiant

Subscribed and sworn to before me, a Notary Public in and for the State and County named above,  
this 2 day of August, 2010.

\_\_\_\_\_



(SEAL) Notary Public

OATH

State of California )

County of San Francisco )

Brandon Chaney, being duly sworn, states that he files this application as Chief Executive Officer of IXC Holdings, Inc.; that in such capacity, he is qualified and authorized to file and verify such application; that he has carefully examined all the statements and matters contained in the application; and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information and belief. Affiant further states that the application is made in good faith, with the intention of presenting evidence in support thereof in every particular.

*[Handwritten signature]*

*[Handwritten signature]*

Signature of Affiant

Subscribed and sworn to before me, a Notary Public in and for the State and County named above,

this 2 day of August, 2010.

\_\_\_\_\_



(SEAL) Notary Public

**JOINT APPLICATION OF**

**Telekenex, Inc.  
and  
IXC Holdings, Inc.**

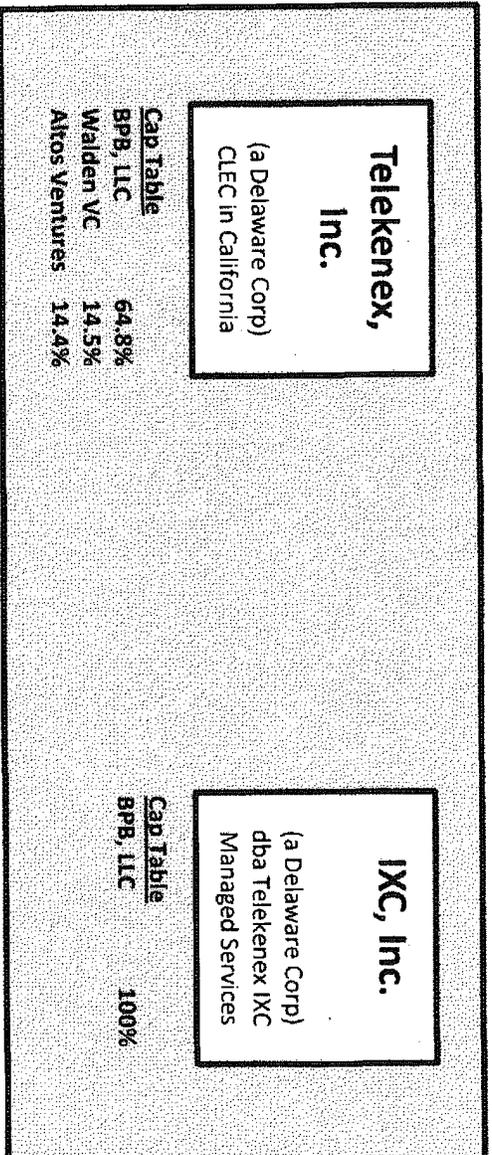
**LIST OF EXHIBITS**

<b>EXHIBIT A</b>	Organization Chart
<b>EXHIBIT B</b>	Nevada Secretary of State Certificate
<b>EXHIBIT C</b>	Financial Statements
<b>EXHIBIT D</b>	Statement of Service Area
<b>EXHIBIT E</b>	Statement of Services Offered
<b>EXHIBIT F</b>	Management Resumes
<b>EXHIBIT G</b>	Customer Notice
<b>EXHIBIT H</b>	Draft Public Notice

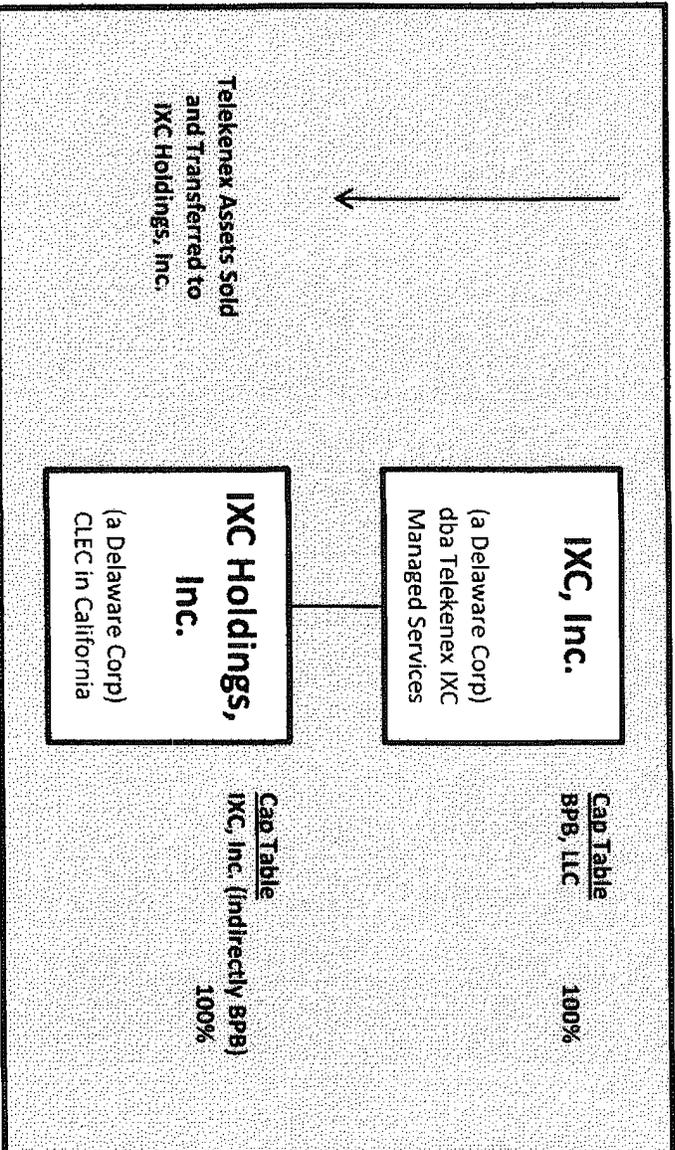
**EXHIBIT A**

Organization Chart

## Pre Deal Structure



## Post Deal Structure



**EXHIBIT B**

Nevada Secretary of State Certificate



**ROSS MILLER**  
 Secretary of State  
 204 North Carson Street, Suite 4  
 Carson City, Nevada 89701-4520  
 (775) 684 5708  
 Website: www.nvsos.gov

**Qualification to do  
 Business in Nevada**  
 (PURSUANT TO NRS CHAPTER 80)

Filed in the office of  Ross Miller Secretary of State State of Nevada	Document Number <b>20100446112-21</b>
	Filing Date and Time <b>06/21/2010 8:50 AM</b>
	Entity Number <b>E0295802010-7</b>

USE BLACK INK ONLY - DO NOT HIGHLIGHT

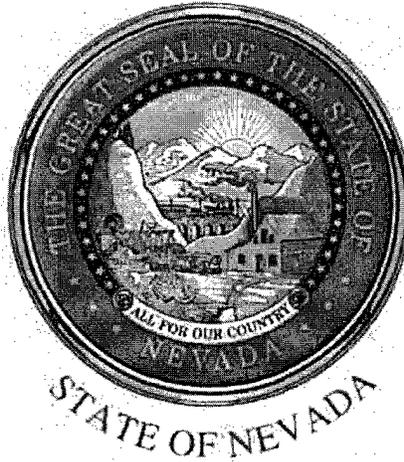
ABOVE SPACE IS FOR OFFICE USE ONLY

<b>1. Name of Corporation:</b> (must be the same as shown on the certificate of existence)	IXC Holdings, Inc.
<b>2. State of Incorporation:</b>	Delaware
<b>3. Registered Agent for Service of Process:</b> (check only one box)	<input checked="" type="checkbox"/> Commercial Registered Agent: <u>The Corporation Trust Company of Nevada</u> Name
	<input type="checkbox"/> Noncommercial Registered Agent (name and address below) <b>OR</b> <input type="checkbox"/> Office or Position with Entity (name and address below)
	Name of Noncommercial Registered Agent OR Name of Title of Office or Other Position with Entity
	Street Address _____ Nevada _____ City _____ Zip Code _____ Mailing Address (if different from street address) _____ Nevada _____ City _____ Zip Code _____
<b>4. Authorized Stock:</b> (set forth the total authorized stock indicating number of par shares, par value per share and/or number of no par shares; mark appropriate box if entity is a nonprofit corporation with or without stock; submit required documentation to support statement; stock statement must match documentation exactly)	Total Authorized Stock: <u>100</u>
	(a) Number of shares with par value: _____
	(b) Par value per share: \$ _____
	(c) Number of shares without par value: <u>100</u>
If a Nonprofit Entity: <input type="checkbox"/> This is a nonprofit entity with authorized stock, as listed above. <input type="checkbox"/> This entity is a nonprofit, non-stock corporation.	
<b>5. Purpose:</b> (required; continue on additional page if necessary)	<i>The purpose of the corporation shall be:</i> <u>To engage in any lawful activity for which corporations may be organized to do business.</u>
<b>6. Name, Title and Signature of Officer Making Statement:</b>	Name <u>Anthony Zabit</u>
	Title of Officer <u>President</u> <input checked="" type="checkbox"/> Officer Signature
<b>7. Certificate of Acceptance of Appointment of Registered Agent:</b>	<i>I hereby accept appointment as Registered Agent for the above named Entity.</i> <input checked="" type="checkbox"/> <u>Katherine Lackey</u> Authorized Signature of Registered Agent or On Behalf of Registered Agent Entity <span style="float: right;">Date <u>6-14-10</u></span>

This form must be accompanied by appropriate fees.

Nevada Secretary of State NRS 80 Qualification  
 Revised: 4-10-09

# SECRETARY OF STATE



## NEVADA STATE BUSINESS LICENSE

**IXC HOLDINGS, INC.**

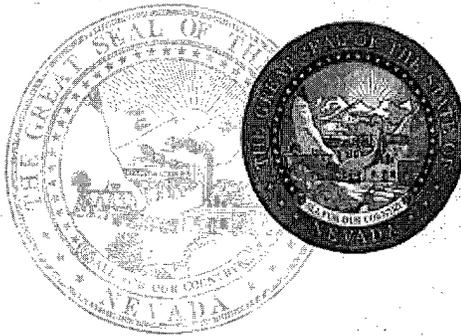
**Nevada Business Identification # NV20101462271**

**Expiration Date: June 30, 2011**

In accordance with Title 7 of Nevada Revised Statutes, pursuant to proper application duly filed and payment of appropriate prescribed fees, the above named is hereby granted a Nevada State Business License for business activities conducted within the State of Nevada.

This license shall be considered valid until the expiration date listed above unless suspended or revoked in accordance with Title 7 of Nevada Revised Statutes.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of State, at my office on July 28, 2010



  
ROSS MILLER  
Secretary of State

This document is not transferable and is not issued in lieu of any locally-required business license, permit or registration.

***You may verify this Nevada State Business License  
online at [www.nvsos.gov](http://www.nvsos.gov) under the Nevada Business Search.***

**EXHIBIT C**

Financial Statements  
IXC Holdings, Inc.

(Public Redacted copy follows)

(Confidential copy filed under seal)

Telekenex  
 Pro Forma Income Statements

	<u>Jul-Dec</u> <u>2010</u>	<u>2011</u>
<b>Revenue</b>		
Recurring		
Non-Recurring		
Subtotal	<u>          </u>	<u>          </u>
 <b>Cost of Services</b>		
Recurring		
Non-Recurring		
Subtotal	<u>          </u>	<u>          </u>
 <b>Gross Margin</b>		
GM %		
 <b>SG&amp;A</b>		
S&M		
Ops & Cust Svc		
Eng		
G&A		
Subtotal	<u>          </u>	<u>          </u>
 <b>EBITDA</b>		
 Non-Recurring Items		
Depreciation		
Interest Expense		
 Pre-tax Income		

PUBLIC COPY

Telekenex  
Pro Forma Balance Sheet

PUBLIC COPY

Cash	
A/R	
Inventory	
Other Current Assets	
Total Current Assets	<hr/>
Fixed Assets	
Accumulated Depreciation	
Total Assets	<hr/> <hr/>
Accounts Payable	
Accrued Liabilities	
Deferred Revenue	
Other Current Liabilities	
Total Current Liabilities	<hr/>
Long-term liabilities	
Total Liabilities	<hr/> <hr/>
Equity	
Total Liabilities & Equity	<hr/> <hr/>

**EXHIBIT D**

Statement of Service Area

**PUBLIC UTILITIES COMMISSION OF NEVADA**

**AREAS TO BE SERVED, INCLUDING CERTIFICATED AREAS SERVED BY  
SMALL-SCALE PROVIDERS OF LAST RESORT**

Pursuant to NRS 704.310(7) and LCB No. R040-08, Section 15(1)(h) (amending NAC 704.7472), the Applicant must indicate the areas to be served, including an identification of the certificated service areas served by a small-scale providers of last resort (as defined by NRS 704.023).

- A. Please generally describe the area(s) of Nevada in which the Applicant intends to provide service (i.e. Las Vegas, Reno, Carson City, Elko, etc.).

**The applicant intends to provide service to all areas of  
AT&T Nevada and Embarq.**

- B. Please indicate in which certificated service areas served by a small-scale providers of last resort the Applicant will be providing service. (A map delineating the service territories for all Nevada providers of last resort can be found on the website of the Nevada Telecommunications Association at <http://nevtel.assn.org/images/TEL E-MAP2005.pdf>).<sup>1</sup>

\_\_\_ Verizon Nevada

\_\_\_ Frontier Citizens

\_\_\_ C.C. Communications

\_\_\_ Filer Mutual Telephone Co.

\_\_\_ Lincoln County Telephone

\_\_\_ Moapa Valley Telephone

\_\_\_ Humboldt Telephone Company

\_\_\_ Rural Telephone Company

\_\_\_ Beehive Telephone Company

\_\_\_ Century Tel

\_\_\_ Rio Virgin Telephone Company

\_\_\_ None of the Above

**EXHIBIT E**

Statement of Services Offered

IXC Holdings, Inc. will continue to offer the same high quality competitive telecommunications services currently supplied by Telekenex, Inc.

Specifically, regulated services include;

- PRI - T1
- DID and DI/DOD T1
- PBX
- 1+ dialing (interstate and intrastate)
- Toll free 800 Service
- Private Line

As well as a full range of resold basic local access services and resold interexchange, including a full range of fixed station VoIP and unregulated data services. Also, business-grade IP Service Provider, Hosted VoIP Solutions, MPLS + Internet, Managed Ethernet and Data Centers.

Local services will include access to Operator Services, Directory Assistance, and 9-1-1 services.

**EXHIBIT F**

Management Resumes

### **Brandon Chaney, Chief Executive Officer**

Mr. Chaney co-founded Telekenex and currently holds the position of Chief Executive Officer. With over a decade of experience in the telecommunications industry, Mr. Chaney has transformed Telekenex into a market leading IP service provider with innovative IP solutions. In 2005, Telekenex's Hosted VoIP solution was awarded a market growth leadership award. Prior to Telekenex, Mr. Chaney was Chief Executive Officer of Enginex Networks, a professional services firm in the telecommunications and networking technology industry. He led Enginex Networks to achieve rapid growth and the firm was ranked third in the 2002 Fast Tech 50.

Prior to Enginex, Mr. Chaney was Chief Executive Officer of Networld Communications. Networld was a leading next generation voice and data equipment provider in the country. Networld made the Inc. 500 list as the 62nd fastest growing private company in the US. Prior to Networld, Mr. Chaney held positions in financial management with General Electric and spent time in many GE business units including GE Nuclear Energy, GE Aircraft Engines and GE Financial Services.

Mr. Chaney graduated from the Indiana University School of Business in Finance.

### **Anthony Zabit, President and Chief Operating Officer**

Mr. Zabit co-founded Telekenex and currently holds the positions of President and Chief Operating Officer.

With over a decade of experience in the telecommunications industry, Mr. Zabit has been instrumental in designing and building Telekenex's robust IP network and IP solutions. In 2005, Telekenex's Hosted VoIP solution was awarded a market growth leadership award. Prior to Telekenex, Mr. Zabit was Chief Financial Officer of Networld Communications. Networld was a leading next generation voice and data equipment provider in the country. Networld made the Inc. 500 list as the 62nd fastest growing private company in the US. Mr. Zabit successfully led Networld's second round of funding that enabled Networld to introduce its Hosted IP Telephony service, which was later spun off into a separate company, CallTower. Prior to Networld, Mr. Zabit was Chief Financial Officer of Zabit & Associates Inc., a company that was launched in 1993 and sold in 1998 to Xceed (NASDAQ: XCED). Prior to Zabit & Associates, Mr. Zabit was with Wells Fargo Nikko Investment Advisers. Mr. Zabit is also a member of the board of directors for the California Association of Competitive Telecommunications Companies, ([www.CALTEL.org](http://www.CALTEL.org)). CALTEL is a non-profit trade association working to advance the interests of fair and open competition and customer-focused service in California telecommunications.

Mr. Zabit graduated from the Indiana University School of Business in Finance.

### **Tom Swayze, Vice President of Technology**

Mr. Swayze currently holds the position of Vice President of Technology.

Mr. Swayze brings over 26 years of networking experience to Telekenex where he has held positions ranging from network engineer to chief information officer. Mr. Swayze oversees the entire hosted IP telephony solution and off-shore software development teams. He was instrumental in designing and implementing Telekenex's award winning IP solutions.

Mr. Swayze is truly a founding father of voice over technologies. He pioneered voice over frame and ATM technologies in the mid 90's. He deployed one of the first Selsius (Cisco Call Manager) solutions. Mr. Swayze was instrumental in one of the first 1000+ International Cisco IP telephony call center deployments. He has been recognized by Cisco as a leader in IP telephony implementations.

Mr. Swayze has held executive engineering positions in several highly respected and innovative companies specializing in application development for Cisco IP telephones - winning Cisco's "Best in Show" for the legal vertical in 2004.

### **Larry Bani, Vice President of Sales**

Mr. Bani currently holds the position of Vice President of Sales.

Mr. Bani brings over 20 years of sales and management experience in the telecommunications industry to Telekenex. Larry is responsible for leading the company's expanding sales efforts and business development of enhanced customer solutions.

Prior to Telekenex, Mr. Bani was the Regional Sales Director for emerging markets at AT&T and grew the region's sales to \$65 million in the first year. Mr. Bani was also Manager for Strategic Initiatives where he developed and oversaw the rollout of multiple projects for AT&T's western region sales teams.

Mr. Bani holds a Masters degree in Management of Technology from Golden Gate University.

## Board of Directors

### Brandon Chaney

Director  
Chief Executive Officer, Telekenex

### Anthony Zabit

Director  
President & Chief Operating Officer, Telekenex

### Larry Marcus

Director  
General Partner, WaldenVC

### Jim Davis

Director  
President, Chevron Energy Solutions

### Matthew Niehaus

Director  
Strategic Development, VeriSign

### Larry Marcus - Director & General Partner, WaldenVC

Mr. Marcus joined WaldenVC from Deutsche Bank Alex Brown, where he was Director of New Media, Broadband, and Enhanced TV research. Prior to Deutsche Bank Alex Brown, he worked in Digital Media Equity Research at Robertson Stephens.

Over his research career, Mr. Marcus followed companies in interactive entertainment, consumer and business software, cable infrastructure, new media, and the Internet. As an analyst, he led numerous IPOs and follow-on offerings for companies such as CBS MarketWatch, Terayon, Woman.com, Edmark, Maxis, Wink, and Softnet.

His coverage also included Intuit, Electronic Arts, Sierra On-line, Broderbund, CNET, Activision, Learning Company, Softkey, Acclaim, RealNetworks, Excite@Home, General Instrument, Scientific Atlanta, Gemstar, and OpenTV. He was an early backer of Netflix and Virage.

Before working in research, Mr. Marcus served as a consultant for Digidesign and Maxis, ran a computer store, and worked as a media planner at Jordan, McGrath, Case and Taylor Advertising. Mr. Marcus is a member of the Board of Directors of MyDTV. In addition, he is on the advisory board of SVASE.

Mr. Marcus received both his B.A. and M.B.A. degrees from the University of California at Berkeley.

**Jim Davis - Director & President, Chevron Energy Solutions**

Mr. Davis brings to Telekenex extensive experience in leading the development of growth enterprises. In 2004, he was recognized for his achievements as Northern California winner of the prestigious Ernst & Young Entrepreneur of the Year Award for Social Responsibility.

As president, Mr. Davis has established Chevron Energy Solutions as one of the nation's leading energy services firms and the first comprehensive energy services company in the oil and gas industry.

Before joining Chevron Energy Solutions, Mr. Davis served as senior vice president of Integrated Solutions for PG&E Energy Services, one of the foremost energy services companies in the nation. As sales executive and business strategist, he conceptualized and established PG&E Energy Services' integrated energy solution model for major commercial, industrial, and institutional accounts, then developed and managed the supporting marketing, sales, deal structuring, finance, and operations functions. The success of this business led to its sale to Chevron in 2000.

Earlier in his career, Mr. Davis served as senior vice president of Marketing and Sales at Duke/Louis Dreyfus, where he led the company's expansion into value-added services. He has also managed global, national, and regional account teams for Enron Capital & Trade Resources and for Access Energy Corporation, where he developed and headed a vertical market team providing integrated solutions to industrial accounts.

Mr. Davis holds a Bachelor of Science degree in business administration, with a major in marketing, from Ohio State University.

**Matthew Niehaus - Director & Strategic Development, VeriSign**

Mr. Niehaus has had successful careers as both a private equity investor and an entrepreneur.

Between 1995 and 2002, he invested \$233 million in companies in the telecommunications and technology industries, initially at J.P. Morgan Capital and later at Telegraph Hill Communications Partners. The nine investments that Mr. Niehaus made during this period produced \$583 million in gross proceeds and an internal rate of return of 71%.

Sample investments include Columbia River Cellular, Triton Cellular, Triton PCS, Lightship Communications, NewSouth Communications, NeoWorld, and CallVision. In addition to investing in and serving as a director, Mr. Niehaus played a lead role in developing the strategy, hiring the management teams, improving operational performance, and assisting with acquisitions for these companies.

In 2003, Mr. Niehaus co-founded R4 Global Solutions, an RFID technology firm that became an early leader in the RFID supply chain market. R4 acquired over 30 customers, primarily Fortune 500 retailers and consumer product and pharmaceutical manufacturers, including Costco Wholesale, Novartis AG, Levi Strauss, Apple Computer, and Del Monte Foods.

Mr. Niehaus led R4's corporate strategy, finance, development, operations, and recruiting activities. R4 was successfully sold to VeriSign in 2005, generating sizable returns for the Company's shareholders.

Prior to joining J.P. Morgan Capital in 1995, Mr. Niehaus was a member of J.P. Morgan's Investment Banking group. Mr. Niehaus received a BA. from Dartmouth College.

**EXHIBIT G**

Customer Notice



## NOTICE OF TRANSFER OF TELEPHONE SERVICE

June 1, 2010

Dear Customer:

Telekenex, Inc ("Telekenex") currently provides your local and/or long distance service. Telekenex will be transferring its assets to IXC Holdings, Inc. ("IXC"), the near future. As a result of this transaction, IXC will be the provider of local and/or long distance services to Telekenex customers.

This transfer will not affect your rates or the terms and conditions of your service. IXC will be doing business as Telekenex so the company name will remain unchanged on your monthly invoice. Furthermore, the employees, business address and service contact numbers will also not change during this transition. You will be able to contact IXC dba Telekenex after this transfer in the exact same manner as before the transfer.

Subject to obtaining state and federal regulatory approvals, we anticipate that the transfer will occur on or about July 6, 2010. Unless you have begun using a service provider other than Telekenex prior to this date, IXC will become your local and/or long distance service provider following the transfer. If Telekenex is not your local service provider, the transfer to IXC will not impact your local carrier selection.

The rates you currently pay for service, as well as your terms and conditions of service, will not change as a result of the transfer. If there is any future change in rates or the terms and conditions of service, you will be notified by IXC in accordance with applicable provisions of law and your service agreement.

Except in the event of the existence of a contract for your telecommunications service, you have the right to subscribe to local and long distance service from any service provider you wish. This decision is entirely up to you, and you may choose to switch to another carrier either before or after this change occurs. IXC values your continued business and will gladly respond to any questions or complaints you may have about your service either prior to or during the change.

There will be no charge to you for the transfer from Telekenex to IXC. However, IXC will not be responsible for any charges that are imposed if you switch to another service provider.

If you have any questions regarding this notice, please contact us either at 800-284-9519 or 800 S. Michigan Street Seattle, WA 98708.

Sincerely,

**Telekenex, Inc.**  
**IXC Holdings, Inc.**

**EXHIBIT H**

Draft Public Notice

**BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA**

**NOTICE OF JOINT APPLICATION OF TELECOMMUNICATIONS COMPANIES OF TRANSFER OF  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

Telekenex, Inc. ("Telekenex") and IXC Holdings, Inc. ("IXC") d/b/a Telekenex (collectively "Joint Applicants") have filed a joint application with the Public Utilities Commission of Nevada ("Commission") designated as Docket No. \_\_\_\_\_, for approval to transfer Certificate of Public Convenience and Necessity ("CPC") 2799 sub 2, from Telekenex, Inc. to IXC Holdings, Inc.

Pursuant to CPC 2799, sub 2, Telekenex is authorized to operate as a competitive supplier of telecommunications service within the State of Nevada. IXC Holdings, Inc. does not currently hold a Certificate of Public Convenience and Necessity to offer competitive telecommunications service in Nevada. The Joint Applicants state the transfer of CPC 2799, sub 2, would involve transfer of certain Telekenex assets and customer base, but would not affect rates, terms, or conditions of service, nor have an adverse affect on existing customers or competition in the State of Nevada.

The Joint Applicants further state that Telekenex is controlled by BPB, LLC ("BPB"), which owns 65% of Telekenex shares. BPB is owned by Mr. Anthony Zabit and Mr. Brandon Chaney, the founders and management team of BPB and Telekenex. The remaining 35% interest in Telekenex is held equally, to the nearest whole percentage, by two investors, Walden VC and Altos Ventures.

IXC Holdings, Inc. is an existing, wholly-owned, indirect subsidiary of BPB, thus the effect of the proposed transfer is to place Telekenex operations, under 100% complete control of BPB, LLC. Should the Commission approve the transfer of CPC 2799, sub 2, IXC Holdings, Inc. would become the holder of this Certificate. There would be no change in day to data control or the management team.

Joint Applicants state that there will be no change in actual control or management and IXC Holdings, Inc. meets all Commission requirements for the issuance of a CPCN to operate as a competitive supplier of telecommunications services in the State of Nevada.

This Joint Application is filed pursuant to the Nevada Revised Statutes ("NRS") and the Nevada Administrative Code ("NAC"), Chapters 703 and 704, including but not limited to NRS 704-330, 704-410, and 704-532. Pursuant to NAC 703-703.5274, Joint Applicants have requested that the Pro Forma financial statements of IXC Holdings, Inc., submitted under seal as part of the Joint Application be given confidential treatment by the Commission.

The Joint Application is available for public viewing at the Commission's website at: <http://pubweb1.state.nv.us/PUCN> and at the office of the Commission: 1150 East William Street, Carson City, Nevada 8901 and 101 Convention Center Drive, Suite 250, Las Vegas, Nevada 89109.

Interested and affected persons may file: 1) comments or protests in writing; 2) petitions for leave to intervene; or 3) notices of intent to participate as a commenter in order to be placed on the service list to receive the pleadings in this docket at either of the Commission's offices on or before, \_\_\_\_\_, June \_\_\_\_\_, 2010.

Members of the public are encouraged to participate in this proceeding through one of these methods (as an intervener, a commenter, or by providing written comments). A person must request in writing to be placed on the service list for this proceeding in order to receive any further notices in this matter. If the matter is set for further proceedings, members of the public will have an opportunity to provide input at any prehearing conference, workshop, and/or consumer session. Participation in the formal hearings, however, is limited to parties that have been granted intervention status, and no public comment is permitted during these hearings except under special circumstances at the discretion of the Presiding Officer.

By the Commission

\_\_\_\_\_  
NANCY KRASSNER  
Assistant Commission Secretary

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2010  
Carson City, Nevada

(SEAL)

# Draft Notice Application for Petitions/Complaints

Page 1 of 2

The Commission requires a draft notice be included with all applications, petitions and complaints. See Nevada Administrative Code 703.162. Please include one copy of this form with your filing.

**I. Include a title that describes the relief requested, or proceeding scheduled pursuant to Nevada Administrative Code (“NAC”) 703.160 (5)(a.)**

NOTICE OF JOINT APPLICATION OF TELECOMMUNICATIONS COMPANIES OF  
TRANSFER OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

**II. Include the name of the applicant, complainant, petitioner, or the name of the agent for same pursuant to NAC 703.160 (5)(b).**

Telekenex, Inc. and IXC Holdings, Inc. d/b/a Telekenex are Joint Applicants.

**III. Include a paragraph with a brief description of the purpose of the filing or proceeding with an introductory statement in plain English understandable to a person of average knowledge and intelligence, that summarizes the relief requested or proceeding scheduled, AND its impact upon consumers, pursuant to NAC 704.160 (5)(c).**

Telekenex is authorized to operate as a competitive supplier of telecommunications service within the State of Nevada. IXC Holdings, Inc. does not currently hold a Certificate of Public Convenience and Necessity in Nevada. The transfer of CPC 2799, sub 2, would result in the transfer of certain Telekenex assets and customer base, with no change in rates, terms, or conditions of service, nor an adverse affect on existing customers or competition in the State of Nevada.

Telekenex is controlled by BPB, LLC (“BPB”), which owns 65% of Telekenex shares. BPB is owned by Mr. Anthony Zabit and Mr. Brandon Chaney, the founders and management team of BPB and Telekenex. The remaining 35% interest in Telekenex is held equally, to the nearest whole percentage, by two investors, Walden VC and Altos Ventures. IXC Holdings, Inc. is an existing, wholly-owned, indirect subsidiary of BPB, thus the effect of the proposed transfer is to place Telekenex operations, under 100% complete control of BPB, LLC. There would be no change in day to day control in the management team.

**A declaration by the applicant, petitioner, or complainant whether a consumer session is required by Nevada Revised Statute (“NRS”) 704.069 (1), NAC 703.162 (2)<sup>1</sup>**

**If the draft notice pertains to a tariff filing, please include the tariff number and the section number(s) or schedule number(s) being revised.**

Joint Applicants state there will be no need for a Consumer Session Pursuant to NRS 704.069(1) due to the fact that the transfer of CPC 2799, sub 2, will not change rates, terms or conditions which would affect any customers.

---

**1 NRS 704.069 Commission required to conduct consumer session for certain rate cases; Commission required to conduct general consumer session annually in certain counties.**

1. The Commission shall conduct a consumer session to solicit comments from the public in any matter pending before the Commission pursuant to NRS 704.061 to 704.110, inclusive, in which:

(a) A public utility has filed a general rate application, an application to recover the increased cost of purchased fuel, purchased power, or natural gas purchased for resale or an application to clear its deferred accounts; and

(b) The changes proposed in the application will result in an increase in annual gross operating revenue, as certified by the applicant, in an amount that will exceed \$50,000 or 10 percent of the applicant's annual gross operating revenue, whichever is less.

2. In addition to the case-specific consumer sessions required by subsection 1, the Commission shall, during each calendar year, conduct at least one general consumer session in the county with the largest population in this state and at least one general consumer session in the county with the second largest population in this state. At each general consumer session, the Commission shall solicit comments from the public on issues concerning public utilities. Not later than 60 days after each general consumer session, the Commission shall submit the record from the general consumer session to the Legislative Commission.

# EXHIBIT 7

**Avery Dale**

---

**From:** ECF@wawd.uscourts.gov  
**Sent:** Wednesday, December 08, 2010 6:01 PM  
**To:** ECF@wawd.uscourts.gov  
**Subject:** Activity in Case 2:10-cv-00268-TSZ Straitshot RC LLC et al v. Telekenex Inc et al Status Conference

**This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.**

**\*\*\*NOTE TO PUBLIC ACCESS USERS\*\*\*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

**U.S. District Court**

**United States District Court for the Western District of Washington**

**Notice of Electronic Filing**

The following transaction was entered on 12/8/2010 at 4:00 PM PST and filed on 12/8/2010

**Case Name:** Straitshot RC LLC et al v. Telekenex Inc et al

**Case Number:** [2:10-cv-00268-TSZ](#)

**Filer:**

**Document Number:** 174(No document attached)

**Docket Text:**

**MINUTE ENTRY** for proceedings held before Judge Thomas S. Zilly- Dep Clerk: *Gail Glass*; Pla Counsel: *Jessica L. Goldman*; Def Counsel: *Leigh Ann Collings Tife and Sherida Colvin, Kenneth J. Diamond and Chad Allred*; CR: *Nancy Bauer as of 11:24 a.m.*; Status Conference held on 12/8/2010. **MINUTE ENTRY** for proceedings held before Judge Thomas S. Zilly - Dep. Clerk: *Gail Glass*; Plaintiff's Counsel: *Jessica Goldman*; Telekenex Defendants' Counsel: *Leigh Ann Collings Tift and Sherida Colvin*; Mammoth Defendants' Counsel: *Chad Allred*; Individual Defendants' (Prudell and Radford) Counsel: *Kenneth J. Diamond*. For the reasons stated on the record, the Court **GRANTS** in part and **DENIES** in part plaintiff's Motion for Leave to File an Amended Complaint, docket no. [147]. The Court **GRANTS** plaintiff leave to file an amended complaint joining IXC Holdings, Inc. as a new defendant. The Court further **GRANTS** plaintiff leave to plead the four new claims described in the plaintiffs proposed amended complaint. See Mot., Ex. 1 (Proposed Am. Compl.) at 308-321, docket no. [147]. The Court **DENIES** plaintiff's request for leave to join proposed defendants Telekenex IXC, Inc. and IXC, Inc. as parties. For the reasons stated on the record, the Court **GRANTS** in part and **DENIES** in part plaintiff's motion to compel discovery. See Joint Letter, docket no. [167]. The Court **GRANTS** plaintiff's motion to compel Defendant Telekenex, Inc. to comply with the Courts previous Order. See Minute Entry, docket no. 133 (requiring Telekenex to produce documents responsive to Request for Production Nos. 66, 67, 68 and 70). The Court **DIRECTS** Telekenex to prepare supplemental discovery responses and serve the responses on plaintiff. The Court **GRANTS** plaintiff leave to conduct a deposition pursuant to Fed. R. Civ. P. 30(b)(6), limited in

scope to the accuracy and completeness of the supplemental discovery responses Telekenex is required to prepare by this Order. In light of the Courts Order granting plaintiff leave to join IXC Holdings, Inc. as a defendant, the Court construes plaintiffs subpoena to IXC Holdings, Inc., see Goldman Decl., Ex. 18, docket no. 148, as a Request for Production of Documents pursuant to Fed. R. Civ. P. 34. The Court further GRANTS plaintiffs motion to compel production of the documents sought in the subpoena. Defendants shall produce the documents sought by the subpoena by December 22, 2010. Except as otherwise stated, the Court DENIES plaintiffs motion to compel. Defendants are DIRECTED to file any motion to dismiss plaintiff's amended RICO and WCPA claims within thirty days of the date plaintiff files its Fifth Amended Complaint. Any such motion shall be noted for consideration consistent with the local rules. See Local Rule CR 7. The Court STRIKES the trial date and all remaining pre-trial deadlines. Except as otherwise provided by the Court in this Order, or as otherwise agreed to by the parties, the parties shall conduct no further discovery. The Court will schedule a status conference to address the need for additional discovery and to set a trial date and new pre-trial deadlines after Defendant IXC Holdings, Inc. has made an appearance and after the Court has considered the pending dispositive motions.(GG)

**2:10-cv-00268-TSZ Notice has been electronically mailed to:**

Lawrence Carl Locker larryl@summitlaw.com, marciar@summitlaw.com

Leigh Ann Collings Tift ltift@littler.com, bsheetz@littler.com, cphillips@littler.com, kcollinsworth@littler.com

Jessica L Goldman jessicag@summitlaw.com, deannas@summitlaw.com

Kenneth J Diamond mail@winterbauerdiamond.com

A Chad Allred callred@elmlaw.com, kadamczyk@elmlaw.com

Anne M. Braudis mail@winterbauerdiamond.com

Leonard Gail lgail@masseygail.com

Jonathan Massey jmassey@masseygail.com

**2:10-cv-00268-TSZ Notice will not be electronically mailed to:**

Anthony Zabit  
3221 20TH STREET  
SAN FRANCISCO, CA 94111

Brandon Chaney  
3221 20TH STREET  
SAN FRANCISCO, CA 94111

Jane Doe Chaney  
3221 20TH STREET  
SAN FRANCISCO, CA 94111

Jane Doe Zabit  
3221 20TH STREET  
SAN FRANCISCO, CA 94111

Joshua Summers  
3849 KLAHANIE DR SE  
#9-302  
ISSAQUAH, WA 98029

Julia Summers  
3849 KLAHANIE DR SE  
#9-302  
ISSAQUAH, WA 98029

# EXHIBIT 8

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STRAIGHTSHOT COMMUNICATIONS,  
INC., a Washington Corporation, et al.

Plaintiffs,

vs.

TELEKENEX, INC., a Delaware Corp., et al.

Defendants.

No. C10-268Z

ORDER

THIS MATTER comes before the Court on motions for summary judgment filed by (1) defendants Mark Prudell and Mark Radford, docket no. 201; (2) Telekenex, Inc. (“Telekenex”), Brandon Chaney, Anthony Zabit, and Joshua Summers (collectively the “Telekenex Defendants”), docket no. 202; and (3) defendants Mammoth Networks, LLC (“Mammoth”) and Brian Worthen (collectively the “Mammoth Defendants”), docket no. 205. Having reviewed the papers filed in support of, and opposition to, the various motions, the Court enters the following Order.

1 **I. BACKGROUND**

2 This case arises out of the corporate dissolution of Plaintiff Straightshot  
3 Communications, Inc. (“SCI”),<sup>1</sup> a company that provided networking services to small  
4 and medium-sized businesses. 5th Am. Compl. (“FAC”), ¶ 14, docket no. 175. The  
5 FAC alleges that between October 2008 and March 2009, several of SCI’s employees  
6 began stealing SCI’s confidential information, including SCI’s customer lists, contacts,  
7 and circuit diagrams, and secretly providing the information to SCI’s primary  
8 competitor Telekenex. *Id.* at ¶¶ 28-29, 34-35, 38, 42, 44, 54, 76, 84, 87-93, 98-105,  
9 109-22. Using this information, Radford, Prudell, and the Telekenex Defendants  
10 allegedly solicited SCI’s existing customers and made false representations that SCI  
11 was going out of business in an effort to induce SCI’s clients to switch their service to  
12 Telekenex. *Id.* at ¶¶ 84, 88, 90-91, 93, 104-05, 111, 115-16, 147, 154-61, 166, 170-72,  
13 175, 180, 186-88, 190, 192, 208, 210, 212-13, 215-16. The Mammoth Defendants  
14 allegedly facilitated the transfer of SCI’s customers to Telekenex by providing  
15 Telekenex with SCI’s confidential circuit information. *Id.* at ¶¶ 93, 95-97.

16 Plaintiffs brought the present lawsuit alleging, among other things, that  
17 defendants violated the Racketeer Influenced and Corrupt Organizations Act  
18 (“RICO”), as well as the state version of RICO, the Washington Criminal Profiteering  
19

20  
21  
22  
23  
24  
25  
26  

---

<sup>1</sup> A related company, Straightshot RC, LLC, (“SRC”) is also a plaintiff in the present action. Order, docket no. 81. SRC acquired some of SCI’s claims against the defendants in an asset foreclosure in 2009. Perry Decl., Ex. 14, docket no. 160. The Court has not yet determined whether the claims that are the subject of the pending motions are the property of SCI or SRC, and the parties have not briefed that issue. The Court need not address the issue in this Order.

1 Act (“WCPA”). See 3d Am. Compl. (“TAC”), docket no. 83. Specifically, plaintiffs  
2 contended that defendants joined together in an association for the common purpose of  
3 defrauding SCI of its trade secrets and confidential information, and using that  
4 information to deprive SCI of its business and customers. See id. at ¶ 293. On  
5 November 15, 2010, the Court granted defendants’ motion to dismiss plaintiffs’ RICO  
6 and WCPA claims because plaintiffs had failed to allege facts demonstrating the  
7 existence of a pattern, a necessary element of both a RICO and WCPA claim. Order,  
8 docket no. 139. However, the Court also granted plaintiffs leave to amend to cure the  
9 TAC’s deficiencies. Id.

12 Although RICO identifies a number of different predicate acts that constitute  
13 illegal racketeering activity, see 18 U.S.C. § 1961(a), the TAC relied exclusively on  
14 wire fraud (18 U.S.C. § 1343). See TAC at ¶ 292, docket no. 83. Plaintiffs filed the  
15 FAC<sup>2</sup> on December 9, 2010, alleging further acts of wire fraud in support of their  
16 amended RICO claim. FAC, docket no. 175. The FAC also alleges new predicate acts  
17 to support plaintiffs’ RICO claim, including obstruction of justice (18 U.S.C. § 1503),  
18 evidence tampering (18 U.S.C. § 1512), and mail fraud (18 U.S.C. § 1341).  
19  
20  
21  
22

---

23 <sup>2</sup> Plaintiffs first filed an amended complaint containing the revised RICO allegations  
24 on December 6, 2010. See 4th Am. Compl., docket no. 173. On December 8, 2010,  
25 the Court granted in part plaintiffs’ motion to file another amended complaint, docket  
26 no. 147, alleging claims against Telekenex’s successor-in-interest, IXC Holdings, Inc.  
 (“IXC Holdings”). Minute Entry, docket no. 174. Shortly thereafter, plaintiffs filed  
 the FAC, which is the operative complaint. Docket no. 175.

1           **A.     Obstruction of Justice Allegations, 18 U.S.C. § 1503(a)**

2           Plaintiffs allege that defendant Summers engaged in at least three instances of  
3           obstruction of justice. Specifically, plaintiffs contend that Summers perjured himself  
4           in a declaration filed in state court on February 16, 2009, and again in two depositions  
5           held on August 3, 2009 and November 16, 2010. FAC at ¶¶ 253, 266-68, docket  
6           no. 175.<sup>3</sup> The allegedly perjurious statements relate to Summers' attempts to cover up  
7           his involvement in defendants' conspiracy to steal SCI's trade secrets and drive the  
8           company out of business. *Id.* at ¶ 250 ("Defendant Summers made a long series of  
9           false statements to cover up Defendants' wrongdoing.").  
10           

11           

12           **B.     Evidence Tampering Allegations, 18 U.S.C. § 1512(c)(1)**

13           Plaintiffs originally alleged in the TAC that when defendant Summers resigned  
14           from his position at SCI on February 6, 2009, he took one of SCI's laptop computers  
15           loaded with confidential information. TAC at ¶ 107, docket no. 83. Summers then  
16           allegedly used the confidential information on the laptop to access SCI's servers and  
17           shut down SCI's client services. *Id.* at ¶¶ 193, 197, 203-04.  
18           

19           Plaintiffs now allege that Summers concealed the fact that he retained the SCI  
20           laptop so that he could destroy evidence of his illicit use of SCI's confidential  
21           information and his access to SCI's servers. FAC at ¶¶ 254-56, 262-63, docket  
22           no. 175. Plaintiffs contend that Summers destroyed the evidence in direct  
23           

24           

25           

26           

---

<sup>3</sup> Plaintiffs also contend that Summers' perjurious statements are indictable  
racketeering activity under 18 U.S.C. § 1512(c)(2).

1 contravention of a state court's temporary restraining order, and with the specific  
2 intent of interfering with the administration of justice. Id. at ¶¶ 261-62, 265, 269.

3  
4 **C. Mail and Wire Fraud Allegations, 18 U.S.C. §§ 1341, 1343**

5 In addition to the original wire fraud allegations, plaintiffs contend that the  
6 defendants engaged in further acts of wire fraud and other acts of mail fraud against  
7 SCI, SCI's former customers, and third parties.

8 1. Mail and Wire Fraud Against SCI

9  
10 Plaintiffs allege that Telekenex engaged in mail and wire fraud when it  
11 fraudulently transferred its assets to IXC Holdings in August 2010. FAC at ¶ 324,  
12 docket no. 175.

13 2. Mail and Wire Fraud Against SCI's Former Customers

14 The FAC alleges that defendants pressured SCI's former customers into signing  
15 contracts with Telekenex without affording the customers the opportunity to consider  
16 alternative service options. Id. at ¶ 271. Plaintiffs contend that defendants'  
17 representations to SCI's former customers that they had no alternative to obtain service  
18 on short notice as a result of SCI's collapse, left the customers with no choice but to  
19 assent to unfavorable service agreements with Telekenex. Id. In addition, at least one  
20 customer, U.S. Bearings, allegedly received inferior service after it switched providers  
21 from SCI to Telekenex. Id.  
22  
23  
24  
25  
26

1                   3.       Mail and Wire Fraud Against Third Parties

2                   In addition to the events related to SCI's collapse, the FAC alleges that  
3 Telekenex has perpetrated other mail and wire fraud schemes against the following  
4 third parties:  
5

- 6                   (1)       Charlotte Russe, Inc. ("Charlotte Russe"). Telekenex and Telekenex  
7                   IXC, Inc. ("Telekenex IXC") allegedly used misrepresentations and the  
8                   threat of service interruptions to pressure Charlotte Russe into signing an  
9                   unfavorable service contract with Telekenex IXC. Id. at ¶¶ 273-82;
- 10                  (2)       Restaurant Concepts II, LLC ("RCII"). Telekenex and Telekenex IXC  
11                  allegedly told RCII that Telekenex IXC would only agree to provide  
12                  service to RCII if the company agreed to extend its contract by 36  
13                  months. Id. at ¶ 283;
- 14                  (3)       Perseus Books, LLC ("Perseus"). Telekenex allegedly refused to port  
15                  Perseus's telephone numbers to a new carrier in violation of federal law  
16                  unless Perseus paid an early termination fee. Id. at ¶¶ 284-88;
- 17                  (4)       Eat 'n Park Hospitality Group, Inc. ("Eat 'n Park"). Telekenex and  
18                  Telekenex, IXC allegedly used misrepresentations and the threat of  
19                  service interruptions to pressure Eat 'n Park into signing an unfavorable  
20                  service contract with Telekenex IXC. Id. at ¶¶ 289-92;
- 21                  (5)       Eric F. Anderson, Inc. ("EFA"). Telekenex allegedly refused to port  
22                  EFA's telephone numbers to a new carrier in violation of federal law  
23                  unless EFA paid an early termination fee. Id. at ¶¶ 293-99;
- 24                  (6)       Dealtree, Inc. ("Dealtree"). Telekenex allegedly misrepresented its  
25                  ability to provide quality services to Dealtree in order to induce Dealtree  
26                  to enter into a service contract with Telekenex. Id. at ¶¶ 300-05;
- (7)       Bryco Funding, Inc. ("Bryco"). Telekenex allegedly misrepresented its  
                  ability to provide quality services to Bryco in order to induce Bryco to  
                  enter into a service contract with Telekenex. Id. at ¶¶ 306-19;
- (8)       Robin Riechert. One of Telekenex's successor corporations, Net World,  
                  Inc., allegedly fraudulently transferred its assets to Telekenex and other

1 companies after Riechert obtained a sizeable judgment against Net  
2 World. Id. at ¶ 320; and

- 3 (9) Michigan Street Buildings, LLC (“Michigan Street”). Telekenex IXC  
4 allegedly wrongly refused to honor the lease agreement between  
5 Michigan Street and AuBeta Network Corp. after Telekenex IXC  
acquired AuBeta in March 2009. Id. at ¶ 321.

6 **II. DISCUSSION**

7 Defendants move to strike many of the allegations in the FAC. Mot., docket  
8 no. 202. Defendants also move for summary judgment on plaintiffs’ RICO claim  
9 (Eighth Cause of Action) and WCPA claim (Ninth Cause of Action). Id.; see also  
10 Mot., docket no. 201; Mot., docket no. 205. The Telekenex Defendants separately  
11 move for summary judgment on plaintiffs’ claims for fraudulent transfer (Fourteenth<sup>4</sup>  
12 Cause of Action), and corporate disregard (Fifteenth Cause of Action).  
13

14 **A. Defendants’ Motion to Strike**

15 Defendants move to strike the new allegations in the FAC to the extent it  
16 (1) alleges that defendants engaged in predicate acts of racketeering activity other than  
17 wire fraud; (2) alleges facts or legal theories previously rejected by the Court; and  
18 (3) alleges misconduct by non-party Telekenex IXC and attributes such conduct to the  
19 defendants. See Reply at 3, docket no. 211. Defendants argue that all three categories  
20 of allegations should be stricken because they exceed the Court’s Order granting leave  
21  
22

---

23 <sup>4</sup> The FAC identifies two different claims as plaintiffs’ “Fourteenth Cause of Action:”  
24 fraudulent transfer and corporate disregard. FAC at 84, docket no. 175. For purposes  
25 of the present motion, the Court will refer to the fraudulent transfer claim as the  
26 Fourteenth Cause of Action and the Corporate Disregard claim as the Fifteenth Cause  
of Action.

1 to amend. See Order, docket no. 139. The Court GRANTS in part and DENIES in  
2 part the motion to strike. The Court GRANTS in part the motion and STRIKES the  
3 paragraphs specifically identified by defendants that allege misconduct by non-party  
4 Telekenex IXC in connection with third parties Charlotte Russe, RCII,<sup>5</sup> Eat ‘n Park,  
5 and Michigan Street. See FAC at ¶¶ 273-83, 289-92, 321. The Court denied  
6 plaintiffs’ motion to add Telekenex IXC as a defendant, see Minute Entry, docket  
7 no. 174, and as such, the allegations are improper.<sup>6</sup> The Court otherwise DENIES  
8 defendants’ motion to strike. With the exception of the allegations related to  
9 Telekenex IXC, defendants have failed to identify any specific paragraphs of the  
10 amended complaint that they contend should be stricken. McGorray v. O’Connor,  
11 87 F. 586 (9th Cir. 1898) (holding that a motion to strike out parts of a pleading must  
12 be denied when the moving party fails to specifically identify the portions to be  
13 stricken); see also Fed. R. Civ. P. 7(b)(1)(B)-(C) (noting that a motion must state with  
14 particularity the grounds for seeking the order and the relief sought).  
15  
16  
17  
18  
19  
20

---

21 <sup>5</sup> In addition, the FAC only alleges that, as to RCII, “Telekenex IXC told [RCII] . . .  
22 that Telekenex IXC would agree to assume RCII’s agreement with AuBeta only if the  
23 contract was extended for a period of 36 months.” FAC at ¶ 283, docket no. 175. The  
24 alleged statement, standing alone, is neither illegal nor improper, and fails to state a  
25 claim for relief.

26 <sup>6</sup> For the same reasons, the Court STRIKES plaintiffs’ allegations regarding third party  
Robin Reichart, see FAC at ¶ 320, docket no. 175, which relate to misconduct  
allegedly perpetrated by non-party Net World, Inc.

1           **B. Defendants' Motions for Summary Judgment<sup>7</sup> — Standard of**  
2 **Review**

3           Summary judgment is appropriate where “there is no genuine dispute as to any  
4 material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ.  
5 P. 56(a); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986). The Court must  
6 draw all reasonable inferences in favor of the non-moving party. See F.D.I.C. v.  
7 O'Melveny & Meyers, 969 F.2d 744, 747 (9th Cir. 1992), rev'd on other grounds, 512  
8 U.S. 79 (1994).

9           **C. Plaintiffs' Amended RICO Claims (Eighth Cause of Action)**

10           To state a claim under RICO section 1962(c),<sup>8</sup> a plaintiff must allege: (1)  
11 conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. Miller v.  
12

---

13  
14  
15 <sup>7</sup> Plaintiffs argue that defendants' motions for summary judgment are premature, and  
16 that the Court should instead apply the liberal Rule 12(b)(6) dismissal standard and  
17 decline to review materials outside the pleadings in deciding defendants' motions.  
18 Defendants' motions are not premature, however, as this case has been pending since  
19 February 2009. Moreover, although plaintiffs request time to conduct further  
20 discovery pursuant to Fed. R. Civ. P. 56(d), the discovery deadline passed on  
21 November 24, 2010. Order, docket no. 80. On December 8, 2010, the Court expressly  
22 ordered the parties to engage in no further discovery, with the limited exception of  
23 discovery regarding plaintiffs' claims against defendant IXC Holdings. Minute Entry,  
24 docket no. 174. Plaintiffs have had countless opportunities to conduct discovery  
25 regarding their RICO claim in the two years that this case has been pending, and no  
26 further discovery is warranted or necessary. Finally, a party requesting a continuance  
pursuant to Fed. R. Civ. P. 56(d) must identify by affidavit the specific facts that  
further discovery would reveal, and explain why those facts would preclude summary  
judgment. See Tatum v. City of San Francisco, 441 F.3d 1090, 1100 (9th Cir. 2006).  
Here, plaintiffs have failed to meet their burden to explain what further discovery  
would reveal, and why it would preclude summary judgment. See Fed. R. Civ. P.  
56(d). Accordingly, the Court DENIES plaintiffs' motion for a Rule 56(d)  
continuance, and will apply the summary judgment standard to defendants' motions.

1 Yokohama Tire Corp., 358 F.3d 616, 620 (9th Cir. 2004). With the exception of the  
2 pattern element, in its prior Order the Court held that plaintiffs had alleged sufficient  
3 facts to establish all of the elements of a RICO claim. Order, docket no. 139.

4  
5 Therefore, the existence of a pattern of racketeering activity is the primary issue before  
6 the Court.

7 To establish a pattern of racketeering activity, the plaintiff must show that the  
8 defendant committed at least two predicate offenses. Clark v. Time Warner Cable,  
9 523 F.3d 1110, 1116 (9th Cir. 2008). The plaintiff must further establish that the  
10 racketeering predicates are 1) related (the relationship element); and 2) part of a  
11 continuous pattern that either threatens or constitutes long-term criminal activity (the  
12 continuity element). H.J., Inc. v. Nw. Bell Tel. Co., 492 U.S. 229, 239 (1989).

13  
14 1. The Relationship Element

15 “‘Related’ conduct ‘embraces criminal acts that have the same or similar  
16 purposes, results, participants, victims, or methods of commission, or otherwise are  
17 interrelated by distinguishing characteristics and are not isolated events.’” Howard v.  
18 Am. Online, Inc., 208 F.3d 741, 749 (9th Cir. 2000) (quoting H.J., 492 U.S. at 239).

19  
20  
21 <sup>8</sup> Plaintiffs also allege that defendants violated two other provisions of the RICO  
22 statute, sections 1962(a) and 1962(d). As discussed below, however, the dispositive  
23 issue on all of plaintiffs’ RICO claims is whether plaintiffs can establish a pattern of  
24 racketeering activity. See Nugget Hydroelectric, L.P. v. Pac. Gas & Elec. Co., 981  
25 F.2d 429, 437 (9th Cir. 1992) (plaintiff must show a pattern of racketeering activity to  
26 recover under section 1962(a)); Simon v. Value Behavioral Health, Inc., 208 F.3d  
1073, 1084 (9th Cir. 2000) (holding that the failure to plead the elements of a section  
1962(c) claim precludes a claim under section 1962(d)), overruled on other grounds  
by, Odom v. Microsoft Corp., 486 F.3d 541 (9th Cir. 2007).

1 “The relationship requirement exists to ensure that RICO is not used to penalize a  
2 series of disconnected criminal acts.” United States v. Eufrazio, 935 F.2d 553, 565  
3 (3d Cir. 1991). In the present case, the relationship element was not disputed in the  
4 last round of motions because all of the allegations in the TAC related to defendants’  
5 alleged misappropriation of SCI’s trade secrets, and SCI’s resulting dissolution (the  
6 “trade secret scheme”).  
7

8       There is no dispute that the majority of the new allegations in the FAC (such as  
9 the allegations relating to Summers’ obstruction of justice and evidence tampering,  
10 and allegations related to SCI’s former customers) are related to the trade secret  
11 scheme. However, the FAC also alleges that Telekenex, acting alone, engaged in mail  
12 and wire fraud involving third parties Perseus, EFA, Dealtree, and Bryco (collectively  
13 the “third party schemes”). Specifically, the FAC alleges that Telekenex  
14 misrepresented its ability to provide quality services in order to entice the third parties  
15 to become customers (Dealtree, Bryco), and refused to transfer its former customers’  
16 telephone numbers to other carriers, in violation of federal law, unless the customers  
17 agreed to pay termination fees (Perseus, EFA).<sup>9</sup> FAC at ¶¶ 284-28, 293-319, docket  
18 no. 175. The Court must determine whether the third party schemes are related to the  
19 trade secret scheme alleged in the FAC.  
20  
21  
22

23  
24 <sup>9</sup> It is questionable whether Telekenex’s alleged misconduct towards Dealtree, Bryco,  
25 Perseus, or EFA rises to the level of an indictable predicate act, because neither the  
26 violation of a statute, nor the failure to perform as promised, constitutes to the level of  
wire fraud. See Hilton Sea, Inc. v. DMR Yachts, Inc., 750 F. Supp. 35, 39 (D. Me.  
1990); Rothman v. Vedder Park Mgmt., 912 F.2d 315 (9th Cir. 1990).

1           The Ninth Circuit addressed the relationship component of a pattern in Howard,  
2 208 F.3d at 749, where the plaintiff’s complaint alleged that AOL, an internet service  
3 provider, fraudulently advertised a flat-fee pricing plan in order to increase  
4 subscribership and drive up the company’s stock price. Id. at 746. The plaintiff  
5 alleged that the advertising was fraudulent because AOL knew that the number of  
6 individuals who would be enticed to sign up for AOL’s services by the advertising  
7 would outstrip the company’s ability to provide internet service. Id. at 746-47. In  
8 addition to the fraudulent advertising scheme, the plaintiff alleged that AOL made  
9 misrepresentations about its shipping needs in order to induce a shipping company to  
10 expand its operations. Id. at 748. The plaintiff contended that the different schemes  
11 were “related” because both schemes demonstrated that “fraudulent activity has been  
12 AOL’s modus operandi over an extended period of time, manifested in a variety of  
13 ways.” Howard v. Am. Online, Inc., Dkt. No. 35, Civ. 97-1642 (C.D. Cal., May 14,  
14 1998). The district court held that the shipping company allegations had no  
15 connection to the false advertising allegations and therefore the two schemes were not  
16 “related” under RICO. Id. The Ninth Circuit affirmed, holding that although the  
17 schemes involved the same participant (AOL), the “purpose, result, victim and method  
18 of the [shipping company] misrepresentations are strikingly different [than the other  
19 allegations in the complaint].” Howard, 208 F.3d at 749.

20           Here, plaintiffs argue that the third party schemes are related to the trade secret  
21 scheme because, collectively, the schemes demonstrate that fraudulent activity is  
22  
23  
24  
25  
26

1 Telekenex's modus operandi. Fraudulent or not, however, the schemes must be more  
2 than merely a series of disconnected criminal acts. Id. at 749. As in Howard, the third  
3 party schemes here had different participants (the only alleged participant was  
4 Telekenex),<sup>10</sup> different victims (Bryco, Dealtree, Perseus, and EFA), different results,<sup>11</sup>  
5 and different methods (no theft of trade secrets) than the trade secrets scheme alleged  
6 in the FAC. Accordingly, the third party schemes alleged in the FAC are unrelated to  
7  
8  
9  
10  
11

---

12 <sup>10</sup> In addition, although the Court previously held that plaintiffs had pleaded sufficient  
13 facts to satisfy the enterprise element of their RICO claim in connection with the trade  
14 secret scheme, the absence of any involvement of the remaining defendants in the third  
15 party schemes alters the Court's analysis of the enterprise element. United States v.  
16 Minicone, 960 F.2d 1099, 1106 (2d Cir. 1992) ("The racketeering acts must be related  
17 to each other . . . and they must be related to the enterprise.") (emphasis added); see  
18 also Banks v. Wolk, 918 F.2d 418, 424 (3d Cir. 1990) ("[A]ll predicate acts in a  
19 pattern must be somehow related to the [same RICO] enterprise."). The FAC does not  
20 allege that any of the defendants except Telekenex were involved in the third party  
21 schemes. Consequently, even if plaintiffs could rely on the third party schemes to  
22 show a pattern of racketeering activity, plaintiffs could not show that the remaining  
23 defendants participated in an enterprise engaged in a pattern of racketeering activity.

24 <sup>11</sup> The evidence relating to the third party schemes submitted by plaintiffs was  
25 apparently obtained by combing through court databases to identify every lawsuit  
26 initiated since 2006 in which Telekenex is a party. See Gail Decl. at ¶¶ 2-6, Exs. 1-5,  
docket no. 210. However, it appears that these lawsuits have uniformly been resolved  
in favor of Telekenex, either by dismissal in Telekenex's favor, or settlement. See Tift  
Decl., Exs. 6, 8, 9, 11, 12, docket no. 204; Telekenex, Inc. v. Charlotte Russe, Inc.,  
Order, docket no. 74, Civ. 09-2-22435-8 (Wash. Sup. Ct. Feb. 8, 2011). Moreover, the  
Court is skeptical that the evidence relating to the third party schemes, which was  
obtained from the pleadings in the various lawsuits, constitute "facts" that support  
plaintiffs' RICO claims. Cf. Word of Faith World Outreach Ctr. Church, Inc. v.  
Sawyer, 90 F.3d 118, 123-24 (5th Cir. 1996).

1 the trade secret scheme for purposes of RICO, and do not establish a pattern of  
2 racketeering activity.<sup>12</sup>

## 3 2. The Continuity Element

4  
5 The continuity element requires proof of either “open-ended” or “closed-ended”  
6 continuity. H.J., Inc., 492 U.S. at 241. The Court’s prior order only granted plaintiffs  
7 leave to plead facts that would demonstrate open-ended continuity, which requires  
8 either (1) a threat of future criminal conduct; or (2) conduct that constitutes the  
9 enterprise’s regular way of doing business. H.J., Inc., 492 U.S. at 241-42. In either  
10 case, the touchstone of a pattern is past conduct that by its nature projects into the  
11 future with a threat of repetition. See Allwaste, Inc. v. Hecht, 65 F.3d 1523, 1528 (9th  
12 Cir. 1995). A plaintiff can establish open-ended continuity where there is an ongoing  
13 scheme, multiple victims, or a risk of continuing illegal activity. See Tigor Title Ins.  
14 Co. v. Florida, 937 F.2d 447, 449 (9th Cir. 1991). Conversely, a plaintiff cannot  
15 establish open-ended continuity if the defendants’ collective conduct is in a sense a  
16 single episode with a single purpose, rather than a series of separate, related acts.  
17 Sever v. Alaska Pulp Corp., 978 F.2d 1529, 1533 (9th Cir. 1992). Thus, where the  
18 defendants’ predicate acts are all directed to one goal which has a definitive ending  
19 date, there is no threat of future criminal activity once that goal is accomplished. See  
20 Religious Tech. Ctr. v. Wollersheim, 971 F.2d 364, 366 (9th Cir. 1992).

21  
22  
23  
24  
25 <sup>12</sup> For the same reasons, the Court concludes that Telekenex’s alleged fraudulent  
26 transfer of assets to IXC Holdings in August 2010, see FAC at ¶ 324, docket no. 175,  
is not “related” to the trade secret scheme for purposes of RICO.

1 This Court previously held that the trade secret scheme alleged in the TAC  
2 constituted a single episode of criminal conduct with a definitive goal: the complete  
3 dismantling of SCI as a company, and the transfer of its business to Telekenex. Order  
4 at 14-15, docket no. 139. Plaintiffs argue that the new allegations in the FAC  
5 demonstrate that the trade secret scheme was not a single episode, but rather, a part of  
6 an ongoing scheme, with multiple victims, that represents defendants' regular way of  
7 doing business.  
8

9 Specifically, plaintiffs argue that the trade secret scheme involved multiple  
10 victims because SCI's former customers were intended victims of the scheme. See  
11 FAC at ¶ 271, docket no. 175 ("The harm to Straightshot's customers was an inherent  
12 part of the defendants' fraudulent scheme."). However, to constitute racketeering  
13 activity, the conduct must be an indictable predicate act under 18 U.S.C. § 1961.  
14 Sedima, S.P.R.L. v. Imrex Co., Inc., 473 U.S. 479, 495 (1985) ("'[R]acketeering  
15 activity' consists of no more and no less than commission of a predicate act.").  
16 Plaintiffs allege that defendants committed wire fraud when they "pressured customers  
17 into signing [unfavorable] contracts with Telekenex without affording customers the  
18 opportunity to consider other options" and "represented that Telekenex was the sole  
19 alternative to risking a major interruption of their phone, data, and Internet Services."  
20 FAC at ¶ 271, docket no. 175. To adequately plead wire fraud, however, a plaintiff  
21 must allege: (1) the formation of a scheme or artifice to defraud; (2) use of the United  
22 States wires or causing a use of the United States wires in furtherance of the scheme;  
23  
24  
25  
26

1 and (3) specific intent to deceive or defraud. Schreiber Distrib. Co. v. Serv-Well  
2 Furniture Co., 806 F.2d 1393, 1400 (9th Cir. 1986). To establish a scheme or artifice  
3 to defraud, a plaintiff must demonstrate that the defendant retained or misappropriated  
4 the money or property of others, through the use of dishonest methods or schemes.  
5 See e.g., Carpenter v. United States, 484 U.S. 19, 26-27 (1987). Plaintiffs submit no  
6 evidence that defendants misappropriated the property of SCI's former customers.  
7

8         Moreover, "business rivals may not use RICO to complain about injuries  
9 derivatively caused by mail frauds perpetrated against customers, because only the  
10 customers are the beneficiaries of the statutory protection." Israel Travel Advisory  
11 Serv., Inc. v. Israel Identity Tours, Inc., 61 F.3d 1250, 1258 (7th Cir. 1995) (citing  
12 Lancaster Cmty. Hosp. v. Antelope Valley Hosp. Dist., 940 F.2d 397, 405-06 (9th Cir.  
13 1991)). Thus, although a business can recover under the common law of unfair  
14 competition when a rival lies to potential customers, the business does not have a  
15 claim under the mail fraud statute, and by extension RICO. Israel Travel Advisory  
16 Serv., Inc., 61 F.3d at 1257; see also Lancaster, 940 F.2d at 406 ("[I]t might be said  
17 that defendants hoped to 'steal' Lancaster's customers. But it cannot be said that these  
18 customers were Lancaster's property."). SCI's former customers are not additional  
19 victims of the trade secrets scheme, and they do not support a showing of open-ended  
20 continuity.  
21  
22  
23

24         Plaintiffs also argue that the trade secret scheme poses a risk of future criminal  
25 activity because defendant Summers continues to engage in illegal acts of obstruction  
26

1 of justice and evidence tampering in an effort to cover-up the trade secret scheme.  
2 FAC at ¶ 250, docket no. 175. Consistent with the law in several circuits, this Court  
3 held in its prior order that a defendant's efforts to cover up a criminal scheme does not  
4 extend the duration of the underlying scheme. Order at 17, docket no. 139 (citing  
5 Midwest Grinding Co. v. Spitz,<sup>13</sup> 976 F.2d 1016, 1024 (7th Cir. 1992); Pyramid Sec.  
6 Ltd. v. IB Resolution, Inc., 924 F.2d 1114, 1117 (D.C. Cir. 1991); Aldridge v. Lily-  
7 Tulip, Inc. Salary Ret. Plan Benefits Comm., 953 F.2d 587, 593-94 (11th Cir. 1992));  
8 Jackson v. Bellsouth Comm'ns, Inc., 372 F.3d 1250, 1268 (11th Cir. 2004) (“[T]he  
9 plaintiffs’ allegations of ongoing acts aimed at concealing an initial wrongdoing [do]  
10 not establish open-ended continuity.”).

11  
12  
13 Moreover, the federal obstruction of justice statute (18 U.S.C. § 1503) applies  
14 only to perjury offered in federal court proceedings. Streck v. Peters, 855 F. Supp.  
15 1156, 1162 (D. Hi. 1994) (citing O’Malley v. New York City Transit Auth., 896 F.2d  
16 704, 708 (2d Cir. 1990)). Similarly, the prohibition on evidence tampering found in  
17 18 U.S.C. § 1512(c) applies only in an “official proceeding,” which does not include  
18 state court proceedings. See 18 U.S.C. § 1515(a) (defining “official proceeding” as  
19  
20

21 <sup>13</sup> Plaintiffs argue that the holding in Spitz does not apply in the Ninth Circuit. Resp.  
22 at 11, n.3. Plaintiffs rely heavily on Living Designs, Inc. v. E.I. Dupont de Nemours &  
23 Co., 431 F.3d 353, 364-65 (9th Cir. 2005), in which the Ninth Circuit held that a  
24 party’s litigation misconduct in a prior lawsuit, for the purpose of inducing the other  
25 party to accept a reduced settlement offer, may form the basis of a subsequent RICO  
26 claim. Unlike Spitz, and the other circuit court cases cited by the Court in its prior  
order, Living Designs did not involve a cover-up of past conduct, and it did not  
address what effect a cover-up has on establishing the pattern element of a RICO  
claim. Therefore, Living Designs is not relevant to the Court’s analysis.

1 matters conducted in a federal forum, or matters involving insurance in interstate  
2 commerce). All of Summers' alleged misconduct, with the exception of his testimony  
3 at the November 2010 deposition, took place in connection with the state court  
4 litigation, and as such, it is not indictable racketeering activity that can support a  
5 showing of continuity.<sup>14</sup>

7 As for the November 2010 deposition, the FAC alleges only that it was  
8 inconsistent with Summers' previous deposition, and that Summers "could not explain  
9 why he had deliberately erased files on the laptop, why he installed a new operating  
10 system to wipe out existing data, and why he ran the 'RegEdit' program to cover up  
11 his wrongdoing." FAC at ¶ 268, docket no. 175. To show obstruction of justice under  
12 18 U.S.C. § 1503, plaintiffs must show that Summers (1) acted with knowledge that;  
13 (2) his actions have the natural and probable effect of interfering with; (3) a pending  
14 judicial proceeding. Salazar-Luviano v. Mukasey, 551 F.3d 857, 862 (9th Cir. 2008)  
15 (citing United States v. Acquilar, 515 U.S. 593, 597, 599 (1995)). The allegations in  
16 the FAC do not support plaintiffs' contention that Summers acted with knowledge that  
17 his testimony would interfere with this proceeding. To the contrary, the FAC alleges  
18 that Summers testified that he did not know why he erased files on the laptop and  
19 installed a new operating system. FAC at ¶ 268, docket no. 175.

---

24  
25  
26  
<sup>14</sup> Contrary to plaintiffs' assertion, see Resp. at 11, docket no. 209, Summers' conduct standing alone is insufficient to show a pattern of racketeering activity. See Clark, 523 F.3d at 1116 (holding that to establish a pattern of racketeering activity, the plaintiff must show that the defendant committed at least two predicate offenses).

1 Plaintiffs have failed to submit evidence supporting their contention that the  
2 defendants are engaged in an ongoing criminal scheme in violation of RICO.

3 Accordingly, the Court GRANTS defendants' motions for summary judgment and  
4 DISMISSES with prejudice plaintiffs' RICO claims.  
5

6 **C. Plaintiffs' Amended WCPA Claims (Ninth Cause of Action)**

7 To establish a claim under the WCPA, a plaintiff must show that the defendants  
8 engaged in a pattern of criminal profiteering. To show a pattern under the WCPA, a  
9 plaintiff must make the same showing required by RICO: relationship plus continuity.  
10 See State v. Barnes, 85 Wn. App. 638, 667, 932 P.2d 669 (1997). Plaintiffs rely on the  
11 same facts to support both their WCPA claim and their RICO claim. Therefore,  
12 plaintiffs have failed to establish a pattern, and the Court GRANTS defendants'  
13 motions and DISMISSES with prejudice plaintiffs' WCPA claims.  
14

15 **D. Plaintiffs' Fraudulent Transfer Claim (Fourteenth Cause of Action)**

16 The Telekenex Defendants move separately for summary judgment on  
17 plaintiffs' fraudulent transfer claim, which is predicated on plaintiffs' contention that  
18 Telekenex transferred all of its assets to IXC Holdings in August 2010, knowing that  
19 this lawsuit was pending, and that plaintiffs were seeking a substantial award of  
20 damages against Telekenex. The Telekenex defendants argue that the Court should  
21 grant summary judgment on plaintiffs' fraudulent transfer claim because plaintiffs  
22 have not yet reduced their claim to judgment and therefore are not "creditors" under  
23 Washington's Uniform Fraudulent Transfer Act ("UFTA"). UFTA, however, defines  
24  
25  
26

1 a creditor as any person who has a claim, and a claim as “a right to payment, whether  
2 or not the right is reduced to judgment.” RCW 19.40.011(3)-(4) (emphasis added).

3  
4 Therefore, plaintiffs are “creditors” under UFTA.

5 The Telekenex defendants also argue that summary judgment is appropriate  
6 because plaintiffs have failed to submit evidence that Telekenex transferred its assets  
7 to IXC Holdings without receiving reasonably equivalent value. RCW  
8 19.40.041(a)(2). Defendants’ second argument also fails, however, because a transfer  
9 may also be fraudulent under UFTA if, as plaintiffs contend, the transferor acted “with  
10 actual intent to hinder, delay, or defraud any creditor. . . .” RCW 19.40.041(a)(1).<sup>15</sup>

11  
12 In the alternative, the Telekenex Defendants move to dismiss plaintiffs’  
13 fraudulent transfer claim under Fed. R. Civ. P. 9(b), arguing that plaintiffs have failed  
14 to plead fraud with sufficient particularity. Plaintiffs argue that dismissal under Rule  
15 9(b) is inappropriate because “[a]llegations of fraud may be based on information and  
16 belief when the facts in question are peculiarly within the opposing party’s knowledge  
17 . . .” Scheidt v. Klein, 956 F.2d 963, 967 (10th Cir. 1992). Here, the relevant facts  
18 relating to the allegedly fraudulent transfer, which occurred nearly seventeen months  
19

20  
21 <sup>15</sup> Telekenex contends that the transfer of its assets in August 2010 could not have  
22 been fraudulent because, before the transfer took place, Telekenex was valued at  
23 \$0.00. See Gail Decl., Ex. 9, docket no. 210 (May 2010 valuation assigning \$0.00  
24 value to Telekenex). Telekenex first raises this argument on reply, and it has not been  
25 fully briefed by the parties. Moreover, the evidence of Telekenex’s valuation is only  
26 an excerpt of a longer valuation report, and it is unclear whether it evaluates the going-  
concern value of the company, which is the relevant valuation for purposes of a  
fraudulent transfer claim. See In re Spokane Concrete Prods., Inc., 126 Wn.2d 269,  
280, 892 P.2d 98 (1995). Accordingly, the Court declines to dismiss plaintiffs’  
fraudulent transfer claim on this basis.

1 into the present lawsuit, are known solely by Telekenex and IXC Holdings, and are the  
2 subject of pending discovery. See Minute Entry, docket no. 174; Goldman Decl., Ex.  
3 18, docket no. 148. Accordingly, the Court DENIES the Telekenex Defendants'  
4 motion as to plaintiffs' fraudulent transfer claim.  
5

6 **E. Plaintiffs' Corporate Disregard Claim (Fifteenth Cause of Action)**

7 The Telekenex Defendants also move for summary judgment on plaintiffs'  
8 claim for corporate disregard. Mot., docket no. 202. A plaintiff seeking to pierce the  
9 corporate veil and impose direct liability on shareholders or corporate officers must  
10 demonstrate that (1) the corporate form has been intentionally used to violate or evade  
11 a duty; and (2) disregard of the corporate form is necessary to prevent an unjustified  
12 loss to the creditor. Meisel v. M&N Modern Hydraulic Press Co., 97 Wn.2d 403,  
13 409-10, 645 P.2d 689 (1982). As a corporation is typically considered a separate  
14 entity, distinct from shareholders and officers, the corporate entity will only be  
15 disregarded in exceptional circumstances. Truckweld Equip. Co. v. Olson, 26 Wn.  
16 App. 638, 644, 618 P.2d 1017 (1980).  
17  
18

19 To establish the first element of a corporate disregard claim, the plaintiff must  
20 show an abuse of the corporate form. Meisel, 97 Wn.2d at 403. Common examples of  
21 such abuse include: commingling of corporate funds and other assets, failure to  
22 segregate funds of related entities, the unauthorized diversion of corporate funds or  
23 assets to non-corporate or personal uses, the failure to maintain corporate minutes or  
24 adequate corporate records, and corporate undercapitalization. See Thomas V. Harris,  
25  
26

1 *Washington's Doctrine of Corporate Disregard*, 56 WASH. L. REV. 253, 260 n.38  
2 (1981).

3  
4 Plaintiffs fail to submit any evidence of abuse of the corporate form, or any of  
5 the type of exceptional circumstances that warrant imposing personal liability on the  
6 individual defendants for the corporation's conduct, and indeed, have not even alleged  
7 such conduct in the FAC.<sup>16</sup> Plaintiffs contend that dismissal is nonetheless  
8 inappropriate because they will ultimately be unable to recover on their claims if they  
9 cannot impose liability on Telekenex's officers and shareholders. However, "[t]he  
10 absence of an adequate remedy alone does not establish corporate misconduct."

11  
12 Meisel, 97 Wn.2d at 411. Accordingly, the Court GRANTS the Telekenex  
13 Defendants' motion, and DISMISSES with prejudice plaintiffs' claim for corporate  
14 disregard.

### 15 **III. CONCLUSION**

16  
17 For the foregoing reasons, the Court GRANTS in part and DENIES in part  
18 defendants' motion to strike. The Court GRANTS in part the motion and STRIKES  
19 paragraphs 273-83, 289-92, and 321 of the FAC. The Court otherwise DENIES the  
20 motion to strike.

21  
22 The Court further GRANTS the motions for summary judgment, docket  
23 nos. 201 and 205, and DISMISSES plaintiffs' RICO claim (Eighth Cause of Action),  
24

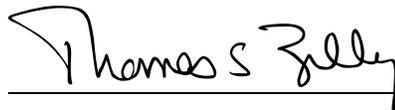
---

25 <sup>16</sup> The FAC merely contains a formulaic recitation of the legal elements of a claim for  
26 corporate disregard. See FAC at ¶¶ 413-15, docket no. 175.

1 and WCPA claim (Ninth Cause of Action) with prejudice. The Court also GRANTS  
2 in part and DENIES in part the Telekenex defendants' separate motions for summary  
3 judgment, docket no. 202, on plaintiffs' claims for fraudulent transfer and corporate  
4 disregard. The Court GRANTS in part the motion and dismisses with prejudice  
5 plaintiffs' claim for corporate disregard (Fifteenth Cause of Action). The Court  
6 DENIES in part the motion on plaintiffs' claim for fraudulent transfer (Fourteenth  
7 Cause of Action).  
8 Cause of Action).

9 IT IS SO ORDERED.

10 DATED this 9th day of May, 2011.

11  
12  
13 

14 Thomas S. Zilly  
15 United States District Judge  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

# EXHIBIT 9



## 2011 press releases

[2010](#)
[2009](#)
[2008](#)
[2007](#)
[2006](#)
[2005](#)
[2004](#)
[2003](#)
[2002](#)
[2001](#)
[2000](#)
[1999](#)

5/5/2011

### TelePacific Communications to Acquire Telekenex

TelePacific Communications, the largest California-based CLEC providing integrated voice and data telecommunications services to the small and medium-sized business (SMB) customer segment in California and Nevada, today announced a definitive agreement to acquire all of the assets and customers of IXC, Inc., and IXC Holdings, Inc., which do business as Telekenex, a business-grade IP services provider headquartered in San Francisco and Seattle.

Under the terms of the agreement, the TelePacific Communications family of companies will gain approximately 1,000 business customers and 122 employees. Additionally TelePacific will augment its existing IP portfolio with the following services:

- A robust hosted PBX platform with nationwide voice capabilities;
- A nationwide PCI compliant MPLS backbone;
- A fiber network in the San Francisco-Oakland Bay Area;
- Managed network services providing advanced configuration and support for complex network deployments; and
- Managed security services through a cloud-based firewall.

"This is a big game-changer for TelePacific," said Dick Jalkut, president and CEO of TelePacific. "This transaction not only enhances TelePacific's network and makes us even more competitive, but it instantly opens up new markets and opportunities for growth. We are excited about the strategic opportunities this presents us and our customers."

With hosted PBX services, TelePacific customers will be able to benefit from all the conveniences and features of an on-premise PBX without the equipment cost and capital outlay. Moreover customers will realize increased productivity leveraging an extensive feature set of cloud-based tools.

"Since our beginnings in San Francisco in 1994, Telekenex has been dedicated to delivering quality communications solutions," said Brandon Chaney, CEO and co-founder of Telekenex.

"We are very proud of the products and services we've developed, as well as the care and service we have provided our customers. I feel confident that TelePacific will successfully carry that tradition forward and build upon our successes," said Anthony Zabit, COO and co-founder of Telekenex.

TelePacific plans to operate the business assets of Telekenex - its service offerings and customer operations - as a separate channel led by Chaney. "I am excited to be part of this dynamic company and I look forward to bringing hosted PBX and managed solutions to TelePacific," said Chaney.

Closing of the transaction is subject to customary closing conditions, including state and federal regulatory approvals. TelePacific will assume operational responsibility for Telekenex's customer base following regulatory approval, expected in the third quarter of 2011. Throughout the closing process, there will be no impact to Telekenex's customer service or support, and TelePacific and Telekenex will work together to ensure a seamless transition of customer service.

The exclusive legal advisor to TelePacific was Gibson, Dunn & Crutcher LLP. The exclusive financial and legal advisors to Telekenex were D.A. Davidson & Co., Gunderson Dettmer and DLA Piper.

[Click here](#) for the transaction summary.

### About TelePacific Communications

TelePacific Communications is a competitive telecommunications carrier that serves business customers throughout California and Nevada. Headquartered in Los Angeles, the Company is the leading competitive carrier in its footprint. TelePacific offers a host of IP, voice, data and Internet services, as well as business continuity, security and managed solutions. For more information, visit [www.telepacific.com](http://www.telepacific.com).

### About Telekenex

Headquartered in Seattle and San Francisco, Telekenex is a business-grade IP service provider with a robust private international network and innovative cloud based solutions, including hosted VoIP, call center, MPLS + Internet, managed ethernet and security. For more information, visit [www.telekenex.com](http://www.telekenex.com).

[CUSTOMER](#) [AGENT](#) [WHOLESALE](#)

[FACEBOOK](#)

[TWITTER](#)

[BLOG](#)

[NEWSLETTER](#)

[LEGAL](#)

[PRIVACY POLICY](#)

[SITE MAP](#)

© 2011 TelePacific Communications All Rights Reserved.



# EXHIBIT 10

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STRAITSHOT RC, LLC, a  
Delaware corporation, )

Plaintiff, )

v. )

No. C10-268 TSZ

TELEKENEX, INC., a Delaware )  
corporation; MARK PRUDELL and )  
JOY PRUDELL, husband and wife )  
and the marital community )  
composed thereof; MARK RADFORD )  
and NIKKI RADFORD, husband and )  
wife and the marital community )  
composed thereof; JOSHUA SUMMERS )  
and JULIA SUMMERS, husband and )  
wife and the marital community )  
composed thereof; ANTHONY ZABIT )  
and JANE DOE ZABIT, husband and )  
wife and the marital community )  
composed thereof; BRANDON CHANEY )  
and JANE DOE CHANEY, husband and )  
wife and the marital community )  
composed thereof; MAMMOTH )  
NETWORKS, LLC, and BRIAN WORTHEN )  
and JANE DOE WORTHEN, husband and )  
wife and the marital community )  
composed thereof, )

Defendants. )

1 TELEKENEX, INC., a Delaware )  
corporation, )  
2 )  
Third-Party Plaintiff, )  
3 v. )  
) )  
4 STRAITSHOT RC, LLC, a )  
Delaware limited liability )  
5 company; STEPHEN PERRY and )  
JANE DOE PERRY, and the marital )  
6 community composed thereof; )  
and ANDREW GOLD and JANE DOE )  
7 GOLD, and the marital )  
community composed thereof, )  
8 )  
Third-Party Defendants. )  
9 )

---

10 MAMMOTH NETWORKS, LLC, a Wyoming )  
limited liability company, )  
) )  
11 Third-Party Plaintiff, )  
v. )  
12 ) )  
13 CLARITAGE STRATEGY FUND, L.P., a )  
Cayman Islands limited partnership, )  
and STRAITSHOT RC, LLC, a Delaware )  
14 limited liability company, )  
) )  
15 Third-Party Defendants. )  
) )

---

18 DEPOSITION OF LARRY MARCUS  
19 Thursday, December 9, 2010

24 Reported by:  
25 ADRIENNE L. ANDREINI, C.S.R. No. 4804

1 BE IT REMEMBERED THAT, on Thursday, December 9,  
2 2010, commencing at the hour of 1:28 p.m. thereof, at  
3 650 California Street, 20th Floor, San Francisco,  
4 California, before me, ADRIENNE L. ANDREINI, C.S.R. No.  
5 4804, State of California, personally appeared

6 LARRY MARCUS  
7 called as a witness by the Plaintiff and Third-Party  
8 Defendant STRAITSHOT RC, LLC, and Third-Party Defendants  
9 STEPHEN PERRY, JANE DOE PERRY, ANDREW GOLD, JANE DOE  
10 GOLD and CLARITAGE STRATEGY FUND, L.P.; who, being by me  
11 first duly sworn, was thereupon examined and testified  
12 as is hereinafter set forth.

13 ---o0o---

14 A P P E A R A N C E S

15 For the Plaintiff and Third-Party Defendant STRAITSHOT  
16 RC, LLC, and Third-Party Defendants STEPHEN PERRY, JANE  
17 DOE PERRY, ANDREW GOLD, JANE DOE GOLD and CLARITAGE  
18 STRATEGY FUND, L.P.:

19 MASSEY & GAIL, LLP  
20 By: LEONARD A. GAIL, Attorney at Law  
21 50 East Washington Street, Suite 400  
22 Chicago, Illinois 60602  
23 (312) 283-1590

24 For the Defendant and Third-Party Plaintiff TELEKENEX,  
25 INC., and Defendants JOSHUA SUMMERS, JULIA SUMMERS,  
ANTHONY ZABIT, JANE DOE ZABIT, BRANDON CHANEY  
and JANE DOE CHANEY, and on behalf of the witness:

LITTLER MENDELSON, P.C.  
By: SHERIDA COLVIN, Attorney at Law  
600 University Street, Suite 3200  
Seattle, Washington 98101  
(206) 381-4931

1 "548," of the minutes of board meetings that are  
2 produced?

3 A. That looks correct to me.

4 Q. You get these after the board meetings?

5 A. They are typically presented and approved.

6 Q. When they come -- Do they come with the  
7 material that was part of the presentation at the board  
8 meeting?

9 A. Not necessarily.

10 Q. Do they sometimes?

11 A. I don't -- I don't recall specifically in what  
12 format I saw them or if they were bundled with something  
13 else.

14 (Whereupon Plaintiff's Exhibit No. 547  
15 and Exhibit No. 548 were marked for  
16 identification.)

17 MR. GAIL: Q. Mr. Finley is the CFO; is that  
18 right?

19 A. Yes, at this time.

20 Q. What was the transaction between ORIX and  
21 Telekenex?

22 A. ORIX is a debt provider.

23 Q. And to what entity?

24 A. To -- This was to Telekenex.

25 Q. And what's the status of their debt?

# EXHIBIT 11

## Competition

The competitive framework for communications services should foster innovation and offer consumers reliable, meaningful selections in affordable services. The FCC pursues removing regulatory, economic and operational barriers throughout the telecommunications sector. The goal is to promote access to services, providing consumers the ability to choose among multiple reliable and affordable services in a pro-competitive and universal access environment.

More information and Competition Reports can be found here:

- [Wireless Bureau](#)
- [Wireline Competition Bureau](#)
- [Media Bureau](#)
- [International Bureau](#)

### Blog

[Digging for More Broadband Deployment](#)

### Rulemaking

[International Settlements Policy Reform](#)

[Amendment of the Commission's Rules Related to...](#)

[CTIA Petition on State & Local Entry Regulation](#)

[Implementation of Section 224 of the Act Amendment of the...](#)

[Preserving the Open Internet](#)

[More »](#)

### Related Topics

[3G and 4G Wireless](#)

[Auctions](#)

[Cable Television](#)

[More »](#)

[700 MHZ](#)

[Broadband](#)

[Connecting America](#)

[Advertising](#)

[Broadcast Television](#)

[Consumers](#)

Federal Communications Commission  
445 12th Street SW, Washington, DC 20554  
Phone: 1-888-225-5322  
TTY: 1-888-835-5322  
Fax: 1-866-418-0232  
E-mail: [fccinfo@fcc.gov](mailto:fccinfo@fcc.gov)

## Search

### FEATURED RESULTS

## Consumers

The FCC's goal is to make high-quality affordable communications services available to all Americans. We're committed to helping consumers through information, complaint mediation, and regulatory policy. We believe that consumers deserve clear, complete

Items per Page  Sort by

### [Telephone Consumer Protection Act](#)

the underlying goal of the National Registry to **protect consumer** privacy rights. We seek comment ... In this rulemaking, we tentatively conclude that we should amend the Commission's rules under the Telephone **Consumer Protection Act** (TCPA) to require telemarketers subject to our rules to honor registrations with the National ...

### [Protecting Your Privacy](#)

to limit the number and type of uninvited calls coming into your home. The Telephone **Consumer Protection** ... **protecting** you from unwanted calls and faxes, see the FCC's **consumer** fact sheets ... **consumer** fact sheet . **Protecting** You From Unwanted Text Messages on Your Wireless Devices ...

### [National Consumer Protection Week](#)

National **Consumer Protection Week** – NCPW for short – is a week filled with getting information to the public about **consumer** issues that affect all of our lives. This year's theme is "Dollars and Sense: Rated A for All Ages". This theme highlights the importance of **consumer** education for **consumers** of all ages ...

### [FCC Adopts New Anti-Slamming Rules and Unveils Further Measures to Protect Consumers from Phone Fraud](#)

FCC Adopts New Anti-Slamming Rules and Unveils Further Measures to **Protect Consumers** from Phone ... December 17, 1998 FCC Adopts New Anti-Slamming Rules and Unveils Further Measures to **Protect Consumers** from ... to further **protect consumers**. Also today, the Commission unveiled a series of new initiatives that will make ...

### [FCC Proposes Forfeiture For Violation of the Telephone Consumer Protection Act](#)

FCC Proposes Forfeiture For Violation of the Telephone **Consumer Protection Act** This News Release: ... COMMISSION PROPOSES FORFEITURE FOR VIOLATION OF THE TELEPHONE **CONSUMER PROTECTION ACT** Washington, DC -- ... for apparently violating the Telephone **Consumer Protection Act** of 1991 (TCPA) and the Commission's rules ...

### [3/6/00 Remarks of Commissioner Gloria Tristani, Working Together to Protect Consumers, NARUC Winter](#)

3/6/00 Remarks of Commissioner Gloria Tristani, Working Together to **Protect Consumers**, NARUC Winter Meeting [ Text Version | Word 97 Version ] Working Together To **Protect Consumers** NARUC Winter Meeting ... cooperation among federal and state regulators in our **consumer protection** efforts. An increasingly competitive ...

### [Public Notice: The Common Carrier Bureau's Consumer Protection Branch Launches Paperless Environment](#)

Public Notice: The Common Carrier Bureau's **Consumer Protection** Branch Launches Paperless ... CARRIER BUREAU'S **CONSUMER PROTECTION BRANCH** LAUNCHES PAPERLESS ENVIRONMENT The Common Carrier Bureau's **Consumer Protection** Branch (CPB) proudly announces the inauguration of its Paperless Environment Initiative ...

### [Protecting Your Telephone Calling Records](#)

for them. **Protecting** Your Customer Information Both Congress and the Federal Communications ... this personal information and what they must do to **protect** it from disclosure. Both Congress and the FCC have ... and FCC rules impose a general duty on telephone companies and VoIP providers to **protect** ...

### [Protecting Your Wireless Network](#)

visit [www.fcc.gov/consumers](http://www.fcc.gov/consumers) . Print Out **Protecting** Your Wireless Network Guide (pdf) ... Benefits and Risks of a Wireless Network Many **consumers** and small businesses use ... On A "firewall" is designed to **protect** computers from harmful intrusions and can be hardware-based ...

[Protecting Children from Objectionable Content on Wireless Devices](#)

For more information about this technology, see our **consumer** fact sheet . With the recent enactment ... content ratings are: Generally Accessible or available to **consumers** of all ages; ... encourages industry efforts to address **consumer** concerns about access to content inappropriate for children, ...

---

**Encyclopedia Articles**

---

**Spam**

restrict such messages). Telephone **Consumer Protection** Act and CAN-SPAM The CAN-SPAM Act supplements some **consumer protections** already put into place by the Telephone **Consumer Protection** Act (TCPA). ... Many **consumers** find unsolicited e-mail – also known as spam – annoying and time-**consuming** ...

**Cybersecurity for Small Business**

that will enhance business and **consumer** confidence. The Business Benefits of Broadband and How to Get Your ... a Cybersecurity Tip Sheet , which outlines the top ten ways entrepreneurs can **protect** their companies – ... productivity and efficiency. However, businesses need a cybersecurity strategy to **protect** their own business, ...

**Consumer Advisory Committee**

Rules and Regulations Implementing the Telephone **Consumer Protection** Act of 1991 June 28, 2002 ... The purpose of the Committee is to make recommendations to the Commission regarding **consumer** issues within the jurisdiction of the Commission and to facilitate the participation of all **consumers** ...

**More Encyclopedia Articles »**

---

**Official Documents**

---

CONSUMER & GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON GLOBAL TEL LINK CORPORATION'S PETITION FOR AN EXPEDITED CLARIFICATION AND DECLARATORY RULING CONCERNING APPLICABILITY OF THE TELEPHONE CONSUMER PROTECTION ACT (TCPA) RULES (Consumer & Governmental Affairs, Public Notice) ...

CONSUMER & GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON CLUB TEXTING'S PETITION FOR DECLARATORY RULING CONCERNING THE TELEPHONE CONSUMER PROTECTION ACT (TCPA) RULES  
RULING CONCERNING THE TELEPHONE **CONSUMER PROTECTION** ACT (TCPA) RULES CG Docket No. ... the Commission's rules under the Telephone **Consumer Protection** Act (TCPA).<sup>2</sup> Specifically, Club Texting asks ... **Consumer Protection** Act of 1991 , Report and Order, 18 FCC Rcd 14014, 14115, para. 165 (2003). 6 47 ...

CGB Seeks Comment on: the Joint Petition Filed by Dish Network, LLC, The United States of America, and The State of California, Illinois, North Carolina, and Ohio For Declaratory Ruling Concerning Telephone Consumer Protection Act Rules, et al

CONCERNING THE TELEPHONE **CONSUMER PROTECTION** ACT (TCPA) RULES AND THE PETITION FILED BY PHILIP J. CHARVAT FOR DECLARATORY RULING CONCERNING THE TELEPHONE **CONSUMER PROTECTION** ... CONCERNING THE TELEPHONE **CONSUMER PROTECTION** ACT (TCPA) RULES PLEADING CYCLE ESTABLISHED CG ...

**More Official Documents »**

1 2 3 4 5 6 7 8 9 > »

Federal Communications Commission  
445 12th Street SW, Washington, DC 20554  
Phone: 1-888-225-5322  
TTY: 1-888-835-5322  
Fax: 1-866-418-0232  
E-mail: [fccinfo@fcc.gov](mailto:fccinfo@fcc.gov)

# EXHIBIT 12

THE HONORABLE THOMAS S. ZILLY

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STRAITSHOT RC, LLC, a Washington  
corporation,

Plaintiff,

v.

TELEKENEX, INC., a Delaware corporation;  
et al.,

Defendants.

CASE NO. C10-268 TSZ

**PLAINTIFF'S OPPOSITION TO THE  
TELEKENEX DEFENDANTS'  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT**

**NOTE ON MOTION CALENDAR:  
December 17, 2010**

TELEKENEX, INC., a Delaware Corporation,

Third-Party Plaintiff,

v.

STRAITSHOT RC, LLC, a Delaware limited  
liability company; et al.,

Third-Party Defendants.

MAMMOTH NETWORKS, LLC, a Wyoming  
limited liability company,

Third-Party Plaintiff,

v.

CLARITAGE STRATEGY FUND, L.P., a  
Cayman Islands limited partnership, et al.,

Third-Party Defendants.

1 Plaintiff Straitshot RC, LLC (“Plaintiff”) respectfully files this memorandum in Opposition  
2 to the Telekenex Defendants’ Motion for Partial Summary Judgment. The Motion fails to  
3 demonstrate the absence of genuine disputes of material facts and should be denied.<sup>1</sup>

## 4 I. FACTS

### 5 A. Straitshot’s Business Was Not Failing In 2008.

6 The Telekenex Defendants begin their motion with the claim that Straitshot  
7 Communications, Inc.’s (“Straitshot”) business was failing in 2008. (ECF 150 at 2:25-4:17.) That  
8 is patently untrue. Straitshot’s growing business resulted in improvements to its financial  
9 performance throughout 2008. Top-line revenues had grown from just over \$300,000 for August  
10 2007 to over \$415,000 for August 2008. (ECF 18-11 ¶ 29 & Ex. 5.) Over the same period,  
11 overhead expenses were slashed over \$80,000 per month – from approximately \$321,000 in  
12 August 2007 to approximately \$239,000 in August 2008. (ECF 18-11 ¶ 29 & Ex. 5.) While the  
13 net operating loss, or “burn rate,” had been reduced significantly, Straitshot did not yet have a  
14 positive cash flow – not at all unusual for a rapidly growing telecommunications business such as  
15 Straitshot. (Goldman Decl., Ex. 2 at 66:6-10.)<sup>2</sup> This financial background was well understood  
16 by Straitshot’s investors, who agreed with a strategy of investment towards profitability.  
17 (Goldman Decl., Ex. 30 at 271:2-6.)

18 However, by the end of summer in 2008, disruptions in the macroeconomic climate began  
19 to increase, and Straitshot undertook a program of further cost cutting. (ECF 18-11 ¶ 29 & Ex. 5.)  
20 By the end of 2008, Straitshot had cut overhead expenses to under \$200,000 per month and,  
21 despite the negative economic climate, had grown topline revenues further to over \$500,000  
22 monthly. (ECF 18-11 ¶ 29 & Ex. 5.) Most significantly, Straitshot had cut the burn rate to under  
23 \$100,000 per month and was on track to become cash-flow positive by the summer of 2009 based

24 <sup>1</sup> To the extent the Telekenex Defendants’ summary judgment arguments overlap with those of other defendants,  
25 Plaintiff hereby incorporates by reference its Oppositions to the summary judgment motions of other defendants.

26 <sup>2</sup> The Declaration of Jessica L. Goldman in Opposition to Defendants’ Summary Judgment Motions (“Goldman  
Decl.”) is filed herewith.

1 on extremely conservative growth assumptions that were, in turn, founded on projections supplied  
2 to Straitshot by Defendants Mark Prudell and Mark Radford. (ECF 18-11 ¶ 29 & Ex. 6.)

3 Straitshot's primary investors, a group of venture capital/private equity funds managed by  
4 a sophisticated and experienced firm, Claritage Strategy Fund, were willing to continue providing  
5 debt financing as required to ensure Straitshot's continued solvency because of the company's  
6 great financial potential. (ECF 18-11 ¶ 30.) In late 2008 Straitshot's largest creditors, wholesale  
7 circuit vendors Covad Communications and Defendant Mammoth Networks, agreed to defer  
8 payment from 2008 until 2010 of approximately \$290,000 and approximately \$120,000,  
9 respectively, of Straitshot's accrued accounts payable. (*Id.*, Exs. 7-8; ECF 27-23, Ex. 7 at  
10 MAMMOTH 13, 595.)

11 Financial projections prepared in the fall of 2008 showed that, even under conservative  
12 assumptions, Straitshot stood poised for growth. (Goldman Decl., Ex. 2 at Exs. 1-2.) Although  
13 the overall economic climate was challenging, "Straitshot actually had an opportunity in that  
14 downturn environment." (Goldman Decl., Ex. 1 at 27:12-13.) It was a lower-cost alternative,  
15 "and that would make us more attractive heading into 2009 and 10 and beyond." (*Id.* at 27:21-23.)  
16 Customer satisfaction was on the whole positive and Straitshot had plans to raise additional funds.  
17 (*Id.* at 33:9-14, 34:9-10.) An expert report confirms that, under conservative assumptions,  
18 Straitshot was worth at least \$17.5 million in early 2009. (Goldman Decl., Ex. 2.)

19 At no time in late 2008 or the first half of January 2009 – immediately prior to Defendants'  
20 assault on Straitshot's customer base – was Straitshot in danger of having its wholesale carriers  
21 disable its network. Straitshot was in regular contact with its key vendors to ensure it made all  
22 payments necessary to maintain service. No wholesale service provider interrupted Straitshot's  
23 service for non-payment during this time. (ECF 18-11 ¶¶ 31-35.)

24 The sole outage occurred later, on February 6, 2009, the day after this lawsuit was filed.  
25 (ECF 150 at 3:14.) This brief shutoff by XO Communications occurred at a time when Straitshot  
26 was scrambling in a life-or-death battle to deal with the catastrophic disruptions in its operations

1 and services caused by the Defendants' fraudulent scheme. The outage lasted only for several  
2 hours. After Straitshot determined the reason for it, Straitshot promptly wired \$22,750 to XO and  
3 service was restored the same day. (ECF 18-11 ¶ 33 & Ex. 11; Goldman Decl., Ex. 3 at 67:1-14.)

4 The Telekenex Defendants also note that one of Straitshot's toll-free support numbers was  
5 wrongfully deactivated for less than a day by Simple Signal in January 2009. (ECF 150 at 3:20-  
6 22.) Straitshot's head of engineering, and now a Telekenex employee and Defendant, Josh  
7 Summers, attempted unsuccessfully to port this number to Straitshot's new toll-free phone  
8 provider, Voxitas. Ultimately, Straitshot set up a new toll-free number for support calls, notified  
9 all of its customers via email and posted the information on its website. (ECF 18-11 ¶ 40 & Ex.  
10 14.) If anything, this episode proves Plaintiff's case. Prudell and Radford "knew exactly what  
11 had happened" but chose "to mislead customers by telling them our phones had been cut off,  
12 knowing full well that wasn't the case." (Goldman Decl., Ex. 3 at 206:8-13.) Defendants used the  
13 technical glitch to "foment[] and fan[]" customer anxieties by making "misrepresentations." (*Id.*)

14 The Telekenex Defendants contend that many of Straitshot's accounts were "far in  
15 arrears," (ECF 150 at 3:13), and cites to Mr. Gold's testimony at his deposition. But the very  
16 deposition testimony it cites makes clear that the vendor invoice information presented to Mr.  
17 Gold at the deposition was not a list of accounts "in arrears" but rather a summary of all of  
18 Straitshot's Accounts Payable at year end. (Goldman Decl., Ex. 3 at 61:24-62:6.) In fact, much of  
19 the Accounts Payable balance was, not surprisingly, less than a month old and over two thirds was  
20 first invoiced in November 2008 or thereafter. (Goldman Decl., Ex. 3 at Ex. 381 at Ex. 1.)

21 The Telekenex Defendants refer to a balance due Covad, a Straitshot service provider.  
22 (ECF 150 at 4:3-12.) They fail to mention that Straitshot had successfully negotiated and agreed  
23 with Covad to a structure deferring the balance, as Covad recognized its "interests were served by  
24 taking steps to make sure Straitshot was strong and viable going forward so that it would continue  
25 to service its existing business and grow." (Goldman Decl., Ex. 3 at 226:9-228:25.)

26 Finally, the Telekenex Defendants contend that Straitshot "abandoned" its leased office,

1 (ECF 150 at 9:3), but once again they omit the full story. The Telekenex Defendants refer to a  
2 “midnight moveout,” (*id.* at 4:16), but the evidence indicates that description is “totally  
3 inaccurate.” (Goldman Decl., Ex. 3 at 204:18.) To the contrary, Straitshot made the decision in  
4 late December 2008 to move out of its Bellevue office. The plan had always been to move to a  
5 smaller location in early January, and the company was on the verge of signing a new lease for  
6 space in Uniguard Park, in Redmond, Washington, when Prudell and Radford left. (ECF 18-11 ¶  
7 39 & Ex. 13.) Both Prudell and Radford were aware of this plan and were actively involved in  
8 packing up and moving the furniture and other materials into storage pending relocation to the  
9 new office – packing and moving that occurred in broad daylight and from an office building  
10 shared by Straitshot’s landlord. (ECF 18-11 ¶ 39 & Ex. 13; Goldman Decl., Ex. 3 at 204:16-21.)  
11 At the time, customers were provided an alternative mailing address. (ECF 18-11 ¶ 39 & Ex. 13.)  
12 Having employees work out of home offices was not unusual; in fact, Radford had done so  
13 throughout his entire employment at Straitshot, (Gold Decl. ¶ 3),<sup>3</sup> and did the same when he  
14 worked at Telekenex. (Goldman Decl., Ex. 4 at 57:23.)

15 **B. There Is Ample Evidence of Unlawful Solicitation of the Straitshot Engineers.**

16 The Telekenex Defendants contend that there is no evidence that it unlawfully solicited the  
17 Straitshot engineers. (ECF 150 at 5:1-7:2.) According to the Telekenex Defendants, Telekenex’s  
18 hiring of *all* of Straitshot’s engineers a week and a half after Prudell and Radford started work at  
19 Telekenex was simply a coincidence. Telekenex purportedly learned of Straitshot’s head of  
20 engineering Josh Summers from Mammoth and of the four other Straitshot engineers when they  
21 responded to a Craigslist ad posted by Telekenex on the very same day they were hired. (ECF 27-  
22 23, Ex. 10 at 89:13-20, 114:20-23; ECF 27-23, Ex. 8 at 136:24-137:2, 138:10-12; Goldman Decl.,  
23 Ex. 5 at 11:4-14, 16:4-15.) The evidence is to the contrary.

24  
25  
26 

---

<sup>3</sup> The Declaration of Andrew S. Gold in Opposition to Defendants’ Summary Judgment Motions (“Gold Decl.”) is filed herewith.

1 According to Telekenex CEO Defendant Brandon Chaney, it was company President  
2 Defendant Anthony Zabit who was charged with filling the senior engineer position. (ECF 27-23,  
3 Ex. 8 at 130:18-24.) Zabit knew Summers was a Straitshot employee. (*Id.* at 134:4-5.) Zabit  
4 himself claims not to recall who initially recommended Summers to him and said he does not  
5 know if Mammoth recommended Summers to him or if he asked Mammoth about Summers first.  
6 (ECF 27-23, Ex. 10 at 82:1-16.) Zabit was clear, however, that Prudell told Zabit that Summers  
7 “was an excellent engineer, and he gave him a very positive reference.” (*Id.* at 82:25-83:1.) Zabit  
8 did not interview anyone else for the job that went to Summers. (*Id.* at 84:3-5.)

9 Prudell was intimately involved in Telekenex’s plan to hire Summers. On January 21,  
10 2009, Prudell informed Straitshot customer Puget Sound Gastroenterology that “Josh [Summers]  
11 is presently assisting Mammoth and Mark [Prudell] secretly in order to facilitate a hostile  
12 takeover/sale” of Straitshot. (Goldman Decl., Ex. 6 at PSG000529-30.)

13 On January 23, 2009, Summers was a paid Straitshot employee. (ECF 18-11 ¶ 42.) He  
14 flew to San Francisco to interview at Telekenex. (ECF 27-23, Ex. 11 at 182:4-9.) Prudell was  
15 fully aware of this trip and trumpeted the fact to Straitshot customers that day as described in an  
16 internal e-mail at Straitshot customer Super Supplements on January 23: “I got a call from Mark  
17 [Prudell] tonight letting me know that there was a good chance our lines would get cancelled....  
18 Also Josh [Summers] is in San Francisco interviewing for a job.” (ECF 27-23, Ex. 12 at  
19 SUPER000268.)

20 Unbeknownst to Straitshot, on January 26, Telekenex offered Summers a job but he did  
21 not immediately accept it and continued his employment with Straitshot. (ECF 27-23, Ex. 11 at  
22 Ex. 59.) Fully aware of the progress of the discussions between Telekenex and Summers, Prudell  
23 continued to advertise them to Straitshot’s customers as part of Defendants' scheme to switch the  
24 customers to Telekenex. An internal Super Supplements e-mail on January 27 reported: “FYI,  
25 here’s the latest. Mark Prudell and Mark Radford went to work for a very similar company to  
26 Straitshot called Telekenex based out of San Francisco.... And supposedly Josh [Summers] is

1 going to work for Telekenex as well.” (ECF 27-23, Ex. 12 at SUPER000831.) Later that day,  
2 Prudell again advertised to Super Supplements that Summers had been hired by Telekenex: “Our  
3 new engineer can help with your CoLo... Not and [sic] issue.” (*Id.*, Ex. 3 at TKNX003633.) It  
4 was not until January 28 that Summers accepted Telekenex’s job offer. (*Id.*, Ex. 11 at Ex. 59.)

5 The alleged coincidence of hiring the rest of Straitshot’s engineers strains credulity even  
6 more. According to Telekenex’s response to Straitshot’s discovery requests:

7 On January 28, 2009, [Straitshot engineer Sunil] Modi responded to  
8 a Craigslist.org Ad posted by Charles Hampton, Telekenex’s  
9 Director of IP Infrastructure. [The other Straitshot engineers] Mr.  
10 Paole [sic], Mr. Dickason, and Mr. McKay applied to the same add  
11 [sic]. On January 29, 2009, Mr. Zabit engaged in a conference call  
with all four network engineers. Mr. Zabit agreed to hire them at the  
same salary as their current employers. All four network engineers  
agreed to the terms and accepted employment with Telekenex.

12 (ECF 27-23, Ex. 13 at Interrog. No. 6.)

13 The truth is completely otherwise. Zabit told Telekenex’s Director of IP Infrastructure  
14 Charles Hampton that “he intended to hire several of the Straitshot engineering staff,” and he  
15 stated this intention prior to the posting of the Craigslist ad. (Goldman Decl., Ex. 7 at 50:3-4,  
16 79:21-25.) Indeed, the day before the Craigslist ad was posted, while all of the Straitshot  
17 engineers continued and were paid as Straitshot employees, Summers, using his personal e-mail  
18 address, e-mailed the other four Straitshot engineers, using their personal e-mail addresses, and  
19 asked them to meet with him at a nearby restaurant at 4 p.m. that day. (Goldman Decl., Ex. 8 at  
20 MCK-PAU-DCK 10.) Summers told the Straitshot engineers “that they could probably come and  
21 work for Telekenex.” (*Id.*, Ex. 7 at 54:23-55:10.)

22 It is evident that the Craigslist ad that followed these events was a complete sham, put in  
23 place by the Telekenex Defendants in hopes of covering its tracks. For the past six or seven years,  
24 Telekenex had had only one engineer in the Seattle area, (*id.*, at 49:4-9); plainly, the sudden  
25 decision to hire five more all at once – and all of Straitshot’s engineering department – was not a  
26 coincidence. Telekenex produced an e-mail dated January 29 at 9:15 a.m. from Craigslist

1 confirming that a posting for “Network Engineering Positions” would be posted “in about 15  
2 minutes.” (ECF 27-23, Ex. 22 at TKX02592.) Consequently, Straitshot engineer Modi could not  
3 have responded to the January 29 ad on January 28 as Telekenex sets forth in its Answer to  
4 Interrogatory No. 6. Moreover, although Telekenex produced 21 other responses to the ad, it has  
5 failed to produce any response from Straitshot engineers Dickason and McKay. (Goldman Decl. ¶  
6 28.) Nor could Dickason explain how he had applied for the job. (Goldman Decl., Ex. 5 at 42:22-  
7 46:6.) He insisted that he learned of the Craigslist ad on January 29, by which time he was  
8 *already* a Telekenex employee. (*Id.* at 48:23-49:24 & Ex. 305.) Modi’s response to the ad is  
9 particularly notable. In contrast to the responses from engineers *not employed by Straitshot*,  
10 Modi’s response is an e-mail attaching a resume but that says nothing by way of introduction or  
11 otherwise. (ECF 27-23, Ex. 3 at TKNX000854.) Every other engineer applying for the posted  
12 position had a cover note indicating the position for which they were applying. (*See, e.g., id.*, Ex.  
13 22 at TKX02680, TKX02619, TKX02620-23, TKX02626-27, TKX02632.) But Modi did not  
14 need to do this, evidently because the Telekenex Defendants well knew the position for which he  
15 was “applying.”

16 The interview process was staged. Prior to the interviews, Zabit provided Hampton with a  
17 list of the names of the four Straitshot engineers, and out of the approximately 25 applicants, Zabit  
18 *only* participated in the interviews of the four Straitshot candidates. (Goldman Decl., Ex. 7 at  
19 74:6-75:13, 80:12-25.) The interviews with the Straitshot engineers lasted only a short time – “it  
20 might have been twenty minutes, it might have been five minutes” and the only thing Zabit  
21 discussed with them was what their Telekenex compensation would be. (*Id.* at 76:3-77:24.)  
22 Although Telekenex always calls references before making job offers, the Telekenex Defendants  
23 did not even *request* references from the four Straitshot engineers. (*Id.* at 81:20-23, 83:5-8.)  
24 Despite the 21 other qualified applicants, and despite Hampton’s recommendation that Telekenex  
25 hire three *other* engineers, it was only the four Straitshot engineers who signed Telekenex job  
26

1 offers on January 29 and were at work for Telekenex the next day. (ECF 27-23, Ex. 3 at  
2 TKNX000410, 415, 419; *id.*, Ex. 11 at Exs. 59, 62; Goldman Decl., Ex. 7 at 75:5-13.)

3 Other evidence confirms that the Telekenex Defendants' story is a lie. On January 27 and  
4 28 – before the posting of the January 29 ad – Prudell was broadcasting the hiring of the Straitshot  
5 engineers in statements to Straitshot customers. On January 27, based on calls from Prudell and  
6 Radford earlier in the day, (ECF 27-23, Ex. 3 at TKNX003564, TKNX003562, TKNX003633; *id.*,  
7 Ex. 12 at SUPER000831), Straitshot customer Super Supplements' IT director explained in an  
8 internal e-mail about Straitshot: "I think their IT staff is leaving after today or [at] least giving  
9 notice." (*Id.*, Ex. 12 at SUPER001134.) By early the next day, January 28 – a day before the  
10 posting of the ad and Zabit's purported interview of the engineers – the Super Supplements IT  
11 director reported that Straitshot's "IT staff, the only remaining employees, were all 4 given offers  
12 by Telekenex which is trying to get our business and the other Straitshot customers." (*Id.* at  
13 SUPER000462.) Early that same morning – still a day before the ad was posted – Prudell e-  
14 mailed to Straitshot customer Ram International: "Josh [Summers] is now a Telekenex employ  
15 [sic]. We will have [Straitshot engineer] Sunil [Modi] and the rest of the guys on board this week."  
16 (ECF 27-23, Ex. 1 at Ex. 32.) By early morning on January 30, 2009, Telekenex President Zabit  
17 was able to report to Straitshot's underlying carrier Mammoth that, as planned, "[w]e have now  
18 hired all of the [S]traitshot engineers." (ECF 27-23, Ex. 3 at TKNX000589.)

19 **C. There Is Ample Evidence That the Telekenex Defendants Harmed Straitshot.**

20 The systematic efforts by the Telekenex Defendants to steal Straitshot customers and to  
21 falsely paint Straitshot as "going out of business" severely hurt Straitshot's ability to function and  
22 stabilize its business in the face of Defendants' onslaught in January and February 2009. (ECF  
23 18-11 ¶ 41.) Straitshot had customers calling daily to its support lines requesting information and  
24 sending e-mails asking for information and assurances that Defendants' claims were not true. (*Id.*)  
25 These distractions created an extremely damaging situation for Straitshot, as it was put in the  
26 position of having to convince customers who were under contract with it that their networks were

1 not at risk of being cut off. (*Id.*) In addition, when normal issues arose with customer networks,  
2 the Straitshot staff had to spend inordinate time dealing with uncooperative customers who were  
3 concerned that any technical issues were evidence of the “doomsday scenario” being trumpeted by  
4 Defendants, while at the same time working desperately with reduced resources to address and  
5 resolve garden-variety technical issues that arise with any network. (*Id.*) Most bills for January  
6 2009 were sent out over two weeks late due to the need to combat Defendants’ attacks on  
7 Straitshot’s business. (*Id.* ¶ 37.) In addition, Straitshot experienced a dramatic slowdown in  
8 payments, as customers decided to withhold payments based on concerns resulting from  
9 conversations with Prudell and Radford. (*Id.*)

10 On January 20, 2009, Straitshot’s counsel wrote Chaney and Prudell that Straitshot had  
11 learned of Prudell’s employment with Telekenex and put Telekenex on notice that Prudell’s  
12 Straitshot employment contract prohibited him from wrongfully soliciting Straitshot customers.  
13 The letter expressed Straitshot’s expectation “that Telekenex will not take any steps to interfere  
14 with the contractual obligations of Mr. Prudell or any other former Straitshot employees to  
15 Straitshot or with Straitshot’s relationships with its customers.” (ECF 27-23, Ex. 6.)

16 Defendants responded by accelerating their plans to harm Straitshot and steal its  
17 customers. On January 20, 2009 while Mammoth was under contract with Straitshot, Zabit e-  
18 mailed Defendant Brian Worthen of Mammoth, Prudell and Radford to advise that Telekenex was  
19 establishing connections to Mammoth’s networks emulating Straitshot’s connections to  
20 Mammoth’s networks to effectuate the scheme to move Straitshot’s customer circuits off  
21 Straitshot’s network and onto Telekenex’s network. Referring to the Defendants’ scheme to move  
22 Straitshot customers to Telekenex’s network without Straitshot’s consent, Defendant and  
23 Telekenex President Zabit e-mailed saying: “LETS GET THIS DONE!!!!!!” (Goldman Decl.,  
24 Ex. 22 at Ex. 164.) On January 22, Zabit e-mailed Worthen requesting a price quote for  
25 Mammoth to provide Telekenex circuits for the Straitshot customers. (ECF 27-23, Ex. 3 at  
26 TKNX000547.) Zabit attached a Straitshot spreadsheet with confidential information about

1 Straitshot's customer networks that he obtained from Prudell and Radford. (*Id.* at TKNX000548.)  
2 That same day, Worthen e-mailed Zabit with the Mammoth pricing for Telekenex to take over all  
3 of the Straitshot customer circuits being supplied to Straitshot by Mammoth. (Goldman Decl., Ex.  
4 22 at Ex. 170.)

5 The following day, Zabit e-mailed in response to Worthen, Prudell, and Radford,  
6 requesting that Mammoth "also include [Straitshot] install date and term/remaining term as we are  
7 negotiating this item with customers." (*Id.* at Ex. 174.) Worthen agreed to Zabit's request for  
8 additional information and provided Telekenex with the confidential technical information and  
9 contract terms and prices Mammoth was charging Straitshot. (*Id.* at Ex. 177.)

10 On January 23, 2009, using stolen confidential Straitshot customer information, Radford e-  
11 mailed Defendant Karen Salazar, Zabit, and Prudell regarding the "top 7 opp[ortunitie]s" to solicit  
12 Straitshot customers and explained that Straitshot customer "PSG is the priority today." (ECF 27-  
13 23, Ex. 3 at TKNX003396.) The Defendants then methodically solicited Straitshot customers to  
14 switch them to Telekenex. (*Id.*, Ex. 1 at Ex. 31, 33, 36; *Id.*, Ex. 3 at TKNX003485,  
15 TKNX003497, TKNX003549, TKNX003500, TKNX003575, TKNX003586, TKNX003589,  
16 TKNX003621; Goldman Decl., Ex. 22 at Ex. 178-180; *Id.*, Ex. 19 at TKNX000529-546,  
17 TKNX003564, TKNX 004865; *Id.*, Ex. 15 at Ex. 102, 103; *Id.*, Ex. 20 at BGCKC000005,  
18 EVERGRN000127.)

19 On January 26, 2009, Radford e-mailed Zabit, Chaney, Prudell, Salazar, and Telekenex  
20 employees Larry Bani and Joel Ciniero, to celebrate the initial successes in Defendants' scheme to  
21 steal Straitshot customers:

22 We just got out Evergreen, US Bearing, and Super Supplements.  
23 Joel [Ciniero] also finished up the RAM waiting for Karen  
24 [Salazar]'s review. Next in order of priority should be Boys and  
25 Girls Club, Norco, Pacific Housing Advisors, and Velocity Express.  
I believe that leaves A-Dec, Steen, Electrical Wholesale, and DPL,  
in the que [sic].

26 (ECF 27-23, Ex. 1 at Ex. 28.)

1 The Telekenex Defendants continued stealing numerous Straitshot customers using  
 2 confidential Straitshot business information. (*See, e.g., id.*, Ex. 1 at Ex. 29, 37.)<sup>4</sup> The Telekenex  
 3 Defendants even developed a “script” for its sales force to use in spreading the false rumor that  
 4 Straitshot was going out of business. (*See, e.g., ECF 27-23, Ex. 1 at Ex. 29.*)<sup>5</sup> Telekenex told its  
 5 sales force that it was acquiring Straitshot and instructed them to sign up as many Straitshot  
 6 customers as possible. (Goldman Decl., Ex. 9 at 15:5-18:15, 33:16-36:14.) The “typical sales  
 7 pitch about the conversion” was “[a]s you know, we’re acquiring Straightshot [sic] and we want to  
 8 migrate everything . . . [W]e are now the underlying carrier, so we need to migrate you over to  
 9 those before your services get disconnected, interrupted, etcetera.” (*Id.* at 61:9-16.)

10 Summers schemed with the Telekenex Defendants – including while he was employed as  
 11 Straitshot’s Director of Engineering – to “transition” Straitshot customers to Telekenex.  
 12 (Goldman Decl., Ex. 10 at Ex. 66.) When he formally joined Telekenex, he organized a  
 13 “Transition Team” of the former Straitshot engineers to port Straitshot customers to Telekenex  
 14 and armed them with confidential business information from Straitshot. (Goldman Decl., Ex. 5 at  
 15 57:1-70:10; Goldman Decl., Ex. 10 at Exs. 76, 77.) On January 30, Summers told the Transition  
 16 Team that they were free to enter the Straitshot computer network and systems. (Goldman Decl.,  
 17 Ex. 11.) Summers improperly logged onto Straitshot’s network, without its consent, and made  
 18 changes to move Straitshot customers to Telekenex. (Goldman Decl., Ex. 10 at Ex. 67; *Id.*, Ex. 19  
 19 at TKNX001315; *Id.*, Ex. 22 at Ex. 143.) On February 4, using stolen confidential Straitshot  
 20 customer information, Radford e-mailed the agent for Straitshot customer Stellar Recovery/ARS

21 \_\_\_\_\_  
 22 <sup>4</sup> *See also* ECF 27-23, Ex. 1 at Ex. 3 at TKNX001239, TKNX002618, TKNX002825, TKNX003621, TKNX003628,  
 23 TKNX003636, TKNX003640, TKNX003646, TKNX003649, TKNX003657, TKNX003708; Goldman Decl., Ex. 12  
 at Ex. 426; *Id.*, Ex. 19 at TKNX003618, TKNX003631; *Id.*, Ex. 20 at BGCKC000013, EVERGRN000012; *Id.*, Ex. 22  
 at Ex. 182.)

24 <sup>5</sup> *See also* ECF 27-23, Ex. 1 at Ex. 3 at TKNX000446, TKNX000454, TKNX000458, TKNX001541, TKNX001544,  
 25 TKNX001569, TKNX001575, TKNX001591, TKNX002620, TKNX002637, TKNX002674, TKNX002825; *Id.*, Ex.  
 26 15 at SANJUAN000006; *Id.*, Ex. 16 at LKWAVASC000026; ECF 18-11, Ex. 19 at SCI014111, SCI014074,  
 SCI015542, SCI015573; Goldman Decl., Ex. 13 at Ex. 439; *Id.*, Ex. 19 at TKNX001674, TKNX001835,  
 TKNX001854, TKNX002756, TKNX002777, TKNX004874, TKNX004875, TKNX004881, TKNX004938; *Id.*, Ex.  
 23 at Ex. 38; *Id.*, Ex. 24 at Ex. 265.)

1 and stated: “As mentioned, we can simply re-point the traffic for customer, ARS, ensuring the  
2 least amount of down time possible. We will not need to re-provision loops or need to role a  
3 truck. Telekenex will honor all the existing SS [Straitshot] pricing.” (ECF 27-23, Ex. 4.)

4 On February 5, 2009, the King County Superior Court entered a TRO against Prudell,  
5 Radford and Telekenex prohibiting them from:

6 (1) using in any way Straitshot’s trade secrets and confidential  
7 information, including without limitation, information about  
8 Straitshot’s customers and its network; (2) Communicating in any  
9 way with anyone known by Defendants to be a Straitshot customer,  
10 vendor, partner or agent of a Straitshot customer; and (3) Making  
11 any statement about the status of Straitshot’s business.

12 (ECF 5-4.) The Telekenex Defendants, as well as Prudell and Radford, blatantly and repeatedly  
13 violated the TRO. (ECF 27-23, Ex. 3 at TKNX001362; Goldman Decl., Ex. 19 at TKNX000904,  
14 TKNX001347, TKNX002049, TKNX004860, TKNX004897; *Id.*, Ex. 20 at  
15 LKWAVASC000030.)

16 For example, on February 12, 2009, Prudell, using stolen confidential Straitshot customer  
17 information, spoke by telephone with Straitshot customer Boys and Girls Club, falsely stated that  
18 Straitshot was going out of business, and solicited Boys and Girls Club to abandon its contract  
19 with Straitshot and execute a services contract with Telekenex at the same prices Straitshot was  
20 charging. (ECF 27-23, Ex. 5 at BGCKC000022.) In an attempt to keep hidden his violation of the  
21 TRO and his continuing role in Defendants’ unlawful scheme, Prudell followed the call with an e-  
22 mail asking that Boys and Girls Club “Please keep me off [Straitshot CEO] Andrew [Gold]’s  
23 Radar and I will give the Boys and Girls Club some great options.” (*Id.* at BGCKC000052.)

24 In another direct violation of the TRO on the same date (February 12), Telekenex  
25 employee Holst e-mailed Radford and requested that for all of the contracts Telekenex had  
26 executed with Straitshot customers: “I need customer contact information, today if possible, if  
not, as early tomorrow as possible. Anthony [Zabit] wants my team to contact all the [former

1 Straitshot] customers tomorrow and obtain Inside Wire information, as well as give them updates  
2 on their cut over into our systems.” (Goldman Decl., Ex. 19 at TKNX001412-13.)

3 The King County Superior Court issued an Amended TRO, which the Telekenex  
4 Defendants, as well as Prudell and Radford, also repeatedly violated. (Goldman Decl., Ex. 12 at  
5 Ex. 429; Goldman Decl., Ex. 19 at TKNX000645, TKNX004866, TKNX004883, TKNX004910,  
6 TKNX004925, TKNX004909; *id.*, Ex. 20 at SOUNDSH000017, SOUNDSH00255, t  
7 ORGTOGO000008-9, ORGTOGO000056, ROGERS3-4, ROGERS49, LKWAVASC46,  
8 BGCKC76-77; *id.*, Ex. 14 at Ex. 202; Gold Decl., Ex. 1 at SCI012018.)

9 The effect of Defendants’ actions on Straitshot’s customer base was devastating. For  
10 example, on January 30, 2009, a representative of Straitshot customer Alpha Packaging e-mailed  
11 Straitshot as follows: “Are you guys in trouble as we have some other company calling us saying  
12 the circuits are being turned off because Straitshot is out of business.” (ECF 18-11, Ex. 19 at  
13 SCI015723.) The same day, Straitshot customer Stellar Recovery, Inc. reported to Straitshot that:

14 I’ve just been contacted by Lenny Williams from Telekenex .... He  
15 indicated that Straitshot is in some extreme financial trouble right  
16 now and Straitshot customers are in jeopardy of their circuits with  
17 underlying carriers being disconnected due to non payment. I’m  
18 trying to validate these claims and make appropriate decisions to  
19 prevent our remote offices from disruption in service.

20 (ECF 18-11, Ex. 19 at SCI015695.) In a follow-up e-mail, a Stellar Recovery representative  
21 wrote: “I ... have a GREAT concern over unethical practices of your x-employees. I don’t know  
22 who to believe. Put yourself in my position.” (*Id.*)

23 Another customer, RAM International, testified that Prudell told it that “Straitshot would  
24 not be able to continue servicing our needs,” and that this phone call was “shocking” and caused  
25 “chaos” at RAM because the loss of service would impair its business. (Goldman Decl., Ex. 12 at  
26 23:16-23, 25:17-25.) Yet another Straitshot customer, US Bearings, testified that Prudell warned  
that there was a “strong possibility of our lines going dark with Straitshot,” and US Bearings was  
forced to switch to Telekenex because “[m]y immediate concern at that point is how can I keep

1 my business going.” (*Id.*, Ex. 13 at 17:17-18, 18:2-3.) US Bearings told Prudell: “Yeah, if  
2 Straitshot has got an issue, then we need to start making some alternate plans.” (*Id.* at 18:5-7.)  
3 US Bearings testified that, up until the Telekenex Defendants’ assault in January 2009, Straitshot’s  
4 service quality had been “[p]erfect.” (*Id.* at 48:12.)

5 On January 28, the IT manager for Straitshot customer Boys and Girls Club explained:

6 I do believe Straitshot communications will lose enough of their  
7 current customers to [e]ffect [] client service. I ... have been  
8 solicited aggressively by past employees of Straitshot  
9 Communications, which leads me to believe that there will be an  
10 exodus from this provider of MPLS type services to other  
11 providers.

12 (ECF 27-23, Ex. 5 at BGCKC 22.)

13 Two days later, Straitshot customer San Juan Navigation heard from Radford that  
14 Straitshot “would probably have their circuits shutdown [sic] in the next week or so” and  
15 consequently, San Juan’s IT director recommended stopping payment on Straitshot services. (*Id.*,  
16 Ex. 15 at SANJUAN6.) Because of the flurry of Telekenex solicitations, on February 2, Super  
17 Supplements decided to withhold payment of \$11,515.91 due to Straitshot for January services.  
18 (*Id.*, Ex. 12 at SUPER000554, SUPER001378.) The next day, Super Supplements terminated its  
19 Straitshot contract. (ECF 18-11, Ex. 19 at SCI015469.)

20 On February 3, 2009, Straitshot customer KBZ reported to Straitshot:

21 It has been a very unsettling week which began with a call from a  
22 representative of Telekenex stating that he was working at the  
23 behest of Covad (and other carrier [sic]) to pick up the pieces of a  
24 defaulted Straitshot and that our circuits could be shut down at any  
25 time as Straitshot was significantly behind in payments to carriers.  
26 .... They knew our current Straitshot rates and offered to put me in  
touch with “former Straitshot employees” that had come to  
Telekenex in the wake of Straitshot’s “impending dissolution” (not  
an exact quote).

(*Id.* at SCI015401.) On the same day, Straitshot customer Vinculum Communications reported to  
Straitshot:

I did receive a contact from Benjamin Jones  
[bjones@telekenex.com].... He contacted me stating that they had

1 purchase [sic] all of your circuits and were going to take over  
 2 services and would still honor the Straitshot price (but we had to  
 3 sign a 3 year extension deal)... I have started looking around to  
 4 move the circuits because of the notification that Straitshot is going  
 out of business. Benjamin did offer for me to speak with Mark  
 Radford (our old sales rep from Straitshot) if I needed verification  
 that Straitshot was out of business.

5 (*Id.* at SCI015407.) Also on February 3, Straitshot agent Jae Sin reported to Straitshot as follows:

6 “People from Telekenex are calling our customers stating that you are shutting them off next week  
 7 Friday and that they can do a[n] internal core routing changes [sic] without changing out the local  
 8 loop.” (*Id.* at SCI015425.) Straitshot’s former CEO, Andrew Gold, explains the gravity of what  
 9 was described and what was occurring:

10 The reference to "internal core routing changes" describes a process  
 11 whereby core network addressing is adjusted to point the network  
 12 endpoints to a different carrier network core, for example to move a  
 13 customer from Straitshot's network to Telekenex's. This type of  
 14 change cannot occur without the cooperation of Straitshot –  
 15 Straitshot being the one in control of the highly confidential  
 information regarding the Straitshot network’s endpoints – unless  
 Telekenex was able to breach the security of Straitshot’s network  
 using information from Prudell, Radford or Summers or was in  
 collusion with the carrier – in this case Mammoth – that was  
 providing the circuit out to the customers location (the “local loop”).

16 (Gold Decl. ¶ 8.)

17 Throughout February 2009, many customers cancelled their Straitshot contracts. (ECF 18-  
 18 11, Ex. 19 at SCI012034-36 (Straitshot customer A-Dec cancelling), SCI012496 (“Unfortunately I  
 19 cant [sic] trust the company and have to look elsewhere. They had a great business model.”); ECF  
 20 27-23, Ex. 7 at Mammoth135.) On February 4, The Neurology Center terminated its Straitshot  
 21 contract explaining: “Late Monday afternoon the Sales Rep that I had been working with returned  
 22 my call and said that the company was going out of business. Because the stability of the company  
 23 is in question we will not be going forward with the contract.” (ECF 27-23, Ex. 3 at  
 24 TKNX000890.) The Straitshot “Sales Rep” to whom The Neurology Center referred was, of  
 25 course, Prudell who was by then a Telekenex employee and who had solicited The Neurology  
 26 Center for Telekenex in December while he was still a Straitshot employee. (Goldman Decl., Ex.

1 26 at Ex. 16.) By February 9, four days after the filing of this lawsuit, Prudell and Radford  
 2 bragged to Telekenex management that there were nine Straitshot customers “closed and in the  
 3 system.” (ECF 27-23, Ex. 3 at TKNX002700.) Three days later, Prudell and Radford solicited  
 4 Straitshot customers by falsely stating: “it looks like SS has thrown the white f[I]ag.” (*Id.*, Ex. 18  
 5 at THERAM000123.)

6 By February 20, 2009, Defendants’ wrongful acts had proved lethal to Straitshot and the  
 7 company closed its doors. (ECF 18-11 ¶ 51.) While the Telekenex Defendants maintain that  
 8 Straitshot’s closure somehow demonstrates the absence of harm, (ECF 150 at 7:4), precisely the  
 9 opposite is true – it shows that Defendants succeeded in their plot to destroy Straitshot.<sup>6</sup>

10 The Telekenex Defendants also note that Straitshot sought to mitigate its damages by  
 11 beginning, on February 16, 2009, to allow its customers to move to other service providers upon  
 12 approval by Straitshot. (*Id.* at 7:5-8.) Again, this only confirms Plaintiff’s damages. (ECF 18-11  
 13 ¶ 46.) The reason Straitshot acted on February 16 was because the Telekenex Defendants had  
 14 succeeded in their scheme, as the very testimony cited by the Telekenex Defendants states. (ECF  
 15 150 at 7:14-16 (“We didn’t feel it was possible for us to continue operating, given the attacks we  
 16 were under from the defendants.”).) Of course, Telekenex signed contracts with many Straitshot  
 17 customers long before Straitshot’s mitigation efforts on February 16.<sup>7</sup>

## 18 II. ARGUMENT

### 19 A. Legal Standard Applicable to the Motion.

20 Plaintiff relies on the statement of the legal standard in its responses to the summary  
 21 judgment motions of the other Defendants.

---

22 <sup>6</sup> In its statement of Facts, but not its Argument section, Telekenex contends that the identity of Straitshot customers  
 23 was not confidential. (ECF 150 at 10:15-17.) For the reasons stated in Plaintiff’s Opposition to Defendants Prudell’s  
 and Radford’s Motion for Summary Judgment, this contention has no merit.

24 <sup>7</sup> *See, e.g.*, ECF 27-23, Ex. 3 at TKNX00733 (Rogers Machinery, 1/30/09); *id.* at TKNX00771 (Pacific Bag, 1/30/09);  
 25 *id.* at TKNX00803 (USB, 1/30/09); *id.* at TKNX00790 (Trumark, 1/30/09); *id.* at TKNX002906 (Evergreen, 1/31/09);  
 26 *id.* at TKNX000764 (iConstituent, 2/2/09); *id.* at TKNX000702 (Ace Hardware, 2/3/09); *id.* at TKNX000743  
 (Velocity Express, 2/6/09); *id.* at TKNX000796 (DuCharme, 2/9/09); *id.* at TKNX000775 (Mega Hertz, 2/11/09); *id.*  
 at TKNX000759 (Shuck, 2/13/09).

1 **B. Material Issues of Fact Exist with Respect to Plaintiff’s Lanham Act Claim.**

2 The Telekenex Defendants acknowledges that the Lanham Act, 15 U.S.C. 1125(a), “has  
3 considerable breadth,” (ECF 150 at 11:18), but it denies that Plaintiff has established a claim  
4 under the Act. The Telekenex Defendants are wrong. The Lanham Act authorizes a civil action  
5 against

6 [a]ny person who ... in connection with any good or services ...  
7 uses in commerce any ... false or misleading representation of fact,  
8 which ... in commercial advertising or promotion, misrepresents the  
nature, characteristics, [or] qualities ... of ... another person’s  
goods, services, or commercial activities ....

9 15 U.S.C. § 1125(a)(1)(B). To recover on its Lanham Act claim, Straitshot must show that:

10 (1) the defendant made a false statement either about the plaintiff’s  
11 or its own product; (2) the statement was made in commercial  
12 advertisement or promotion; (3) the statement actually deceived or  
13 had the tendency to deceive a substantial segment of its audience;  
14 (4) the deception is material; (5) the defendant caused its false  
statement to enter interstate commerce; and (6) the plaintiff has been  
or is likely to be injured as a result of the false statement, either by  
direct diversion of sales from itself to the defendant, or by a  
lessening of goodwill associated with the plaintiff’s product.

15 *Newcal Indus., Inc. v. IKON Office Solution*, 513 F.3d 1038, 1052 (9th Cir. 2008) (quotation  
16 marks & citation omitted), *cert. denied*, 129 S. Ct. 2788 (2009). Plaintiff meets this standard and  
17 addresses the Telekenex Defendants’ two assertions below.

18 First, Defendants’ statements were false. Defendants told Straitshot customers, and created  
19 a script for use by other Telekenex employees saying, that Straitshot was “going out of business,”  
20 that Straitshot owed its carriers “almost 1 million dollars,” that Straitshot’s carriers had “asked  
21 [Telekenex] to help them with supporting you, the customer,” and that Straitshot’s customer  
22 circuits would be “disconnected within one week.” (ECF 27-23, Ex. 1 at Ex. 29; ECF 27-23, Ex.  
23 3 at TKNX003700, TKNX002825, TKNX000890 (“Late Monday afternoon the Sales Rep that I  
24 had been working with [at Straitshot] returned my call and said that the company was going out of  
25 business.”); ECF 18-11, Ex. 19 at SCI014111 (“Hi Mark, We have a customer with you, Miller  
26 Inc. They were contacted by Telekenex, and told Straitshot was going under and they’d be

1 disconnected within one week unless they signed up with Telekenex.”), SCI015761 (“Our  
2 customer ... unfortunately was the recipient of a scare tactic call from Telekenex. He was told  
3 Straitshot was going out of business because they were so far behind in carrier payments and his  
4 service would be dark within three weeks.”), SCI015723 (“we have some other company calling  
5 us saying the circuits are being turned off because Straitshot is out of business”). Although  
6 Defendants’ statements were primary causes of Straitshot going out of business, they were false at  
7 the time they were made. (ECF 18-11 ¶ 41.)

8 The Telekenex Defendants ignore the statements cited above (many of which were  
9 included in the Third Amended Complaint)<sup>8</sup> and instead focuses on a few statements by former  
10 Straitshot board member Stephen Perry in his deposition, which did not purport to be – nor could  
11 they be given his lack of personal knowledge as to what the Telekenex Defendants were doing –  
12 an exhaustive description of Plaintiff’s claim. (ECF 150 at 13:11-14.) The Telekenex Defendants  
13 also cite an e-mail of a telecommuting employee who was uncertain what address to provide a  
14 customer after Straitshot left its Bellevue office. (*Id.* at 9:6-10.) The fact that Straitshot left its  
15 office in no way renders true the Telekenex Defendants’ inflammatory statement to customers that  
16 Straitshot was about to “close its doors.” (*Id.* at 9:2.) Plainly, the connotation of the Telekenex  
17 Defendants’ statement was that Straitshot was going out of business and would be unable to serve  
18 customers – a statement that was not true until Defendants’ own wrongdoing later made it so.

19 The Telekenex Defendants’ assertions that Straitshot customers were going to “go dark” or  
20 be “disconnected” if they did not switch to Telekenex not only were baseless, but were also false  
21 in light of the industry practice of maintaining customer connectivity even if an intermediate  
22 carrier, such as Straitshot, failed to pay its carriers, such as Mammoth. (Goldman Decl., Ex. 31 at  
23 257-58.) Mammoth, in particular, followed that industry practice. (*Id.*)

24  
25  
26

---

<sup>8</sup> Because the Telekenex Defendants’ Motion was filed while the Third Amended Complaint (“TAC”) was operative, citations in this brief are to the TAC.

1 Next, the Telekenex Defendants contend that “there is no evidence in the form of  
 2 consumer surveys or direct consumer testimony that the statements at issue actually influenced a  
 3 purchasing decision.” (*Id.* at 14:8-10.) First, because Defendants’ statements were literally false  
 4 and because their statements were intended to mislead consumers into believing that Straitshot  
 5 was going out of business, it must be assumed that Straitshot’s customers were deceived by  
 6 Defendants’ statements. *William H. Morris Co. v. Group W, Inc.*, 66 F.3d 255, 258 (where  
 7 statement is literally false or is intended to mislead consumers, it is assumed that consumers relied  
 8 on and were deceived by the statements), *opinion supplemented in non-relevant part*, 69 F.3d 310  
 9 (9<sup>th</sup> Cir. 1995); *Harper House, Inc. v. Thomas Nelson, Inc.*, 889 F.2d 197, 209 (9th Cir.1989)  
 10 (same); *U-Haul Int’l, Inc. v. Jartran, Inc.*, 793 F.2d 1034, 1040-41 (9th Cir.1986) (same).

11 Further, consumer surveys are not required to prove that a statement is false or deceptive.<sup>9</sup>  
 12 The comments and actual behavior of Straitshot customers, many of which explained that they  
 13 were leaving Straitshot because they were afraid it was closing, shows they were in fact misled.  
 14 (*See supra* § I.C.) The Telekenex Defendants’ assertion that Plaintiff cannot “identify a single  
 15 customer who made a decision to abandon a Straitshot contract for services based upon ‘false’  
 16 statements attributable to a Telekenex Defendant,” (ECF 150 at 14:18-20), is itself plainly false.  
 17 (*See supra* § I.C.)<sup>10</sup>

18 **C. Material Issues of Fact Exist with Respect to Plaintiff’s Claim Under the**  
 19 **Washington Consumer Protection Act.**

20 To recover on its Consumer Protection Act claim, Plaintiff must show:

21 \_\_\_\_\_  
 22 <sup>9</sup> *Horphag Research Ltd. v. Garcia*, 475 F.3d 1029, 1037 (9th Cir. 2007) (consumer survey unnecessary in trademark  
 23 case); *Porous Media Corp. v. Pall Corp.*, 110 F.3d 1329, 1337 (8th Cir. 1997) (manufacturer was not required to  
 24 provide consumer surveys or reaction tests in false advertising action against its competitor under Lanham Act);  
 25 *Federal Trade Comm’n v. Brown & Williamson Tobacco Corp.*, 778 F.2d 35, 40-42 (D.C. Cir. 1985) (construing the  
 26 “false advertising” section of the Federal Trade Commission Act and holding that where deception is self-evident,  
 consumer surveys are not required).

<sup>10</sup> *See also* ECF 27-23, Ex. 3 at TKNX003595 (“US Bearings is moving to the telekenex product under ‘disaster  
 recovery circumstances’, and does not have time to explore other options”); *id.* at TKNX003595 (“a gun is being held  
 to the customers [sic] head”); *id.*, Ex. 14 at PACBAG9 (“As we discussed, the fact that Straitshot’s business was  
 going under, combined with the tight timeline was the primary reason for agreeing to work with Telekenex”).

1 (1) an unfair or deceptive act or practice, (2) in trade or commerce,  
2 (3) that impacts the public interest, (4) which causes injury to the  
party in his business or property, and (5) which injury is causally  
linked to the unfair or deceptive act.

3 *Indus. Indem. Co. of the NW, Inc. v. Kallevig*, 114 Wn.2d 907, 920-21, 792 P.2d 520 (1990)  
4 (citing *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 784-85,  
5 719 P.2d 531 (1986)). Plaintiff amply satisfies these elements.

6 The Telekenex Defendants contend that, “for conduct to be an unfair or deceptive practice  
7 under the CPA, it must have the capacity to ‘deceive a substantial portion of the public.’” (ECF  
8 150 at 15:5-6 (quoting *Segal Co. (Eastern States), Inc. v. Amazon.com*, 280 F. Supp. 2d 1229,  
9 1232 (W.D. Wash. 2003) (citation omitted).) However, the *Segal* case involved “the formation  
10 and breach of a contractual relationship between only Sibson and defendant. [The *Segal*]  
11 Plaintiffs never assert that defendant contacted members of the general public, nor do plaintiffs  
12 claim that defendant executed contracts with any other parties.” 280 F. Supp. 2d at 1233. In  
13 contrast, Defendants’ misconduct here involved numerous parties, including scores of Straitshot’s  
14 customers. The Telekenex Defendants misappropriated trade secrets, violated the Lanham Act,  
15 and solicited numerous Straitshot customers using Straitshot’s confidential business information.  
16 The Telekenex Defendants deceived customers into believing that Straitshot had failed and that  
17 they rapidly needed to find a new service provider. (See Pl.’s Opp’n. to Defs. Prudell’s and  
18 Radford’s Motion for Summ. J. at §§ I.C, D.) Violation of a law governing fair competition is an  
19 unfair or deceptive act where it “tends to and does deceive or mislead persons of ordinary  
20 caution.” *Nordstrom, Inc. v. Tampourlos*, 107 Wn.2d 735, 740, 733 P.2d 208 (1987) (“trade name  
21 infringement was an unfair or deceptive act as defined by the” CPA). In *Nordstrom*, the Court  
22 found that the first *Hangman Ridge* factor “clearly” was satisfied where the misappropriation of  
23 the plaintiff’s name “tends to and does deceive or mislead persons of ordinary caution.” *Id.* That  
24 standard is met here, as the Telekenex Defendants’ false and misleading statements to Straitshot  
25 customers tended to and did mislead them into believing that a move to Telekenex was essential.

1 The Telekenex Defendants contend (without citation) that “the customers that were the  
2 targets of these acts were customers that Defendants Prudell and Radford identified as likely to  
3 follow them to a new employer based upon past relationships. There is no indication at all that the  
4 Telekenex Defendants attempted to solicit customers on a widespread or general basis.” (ECF 150  
5 at 15:15-18.) As the lack of supporting evidence suggests, that claim is simply false as there is  
6 every indication the Defendants attempted to and did solicit customers on a widespread or general  
7 basis. To the degree that it is even legally relevant, Prudell and Radford also lacked the asserted  
8 “prior relationships” with the bulk of the Straitshot customers they solicited as shown in § II.D of  
9 Plaintiff’s Opposition to Defendants Prudell’s and Radford’s Motion for Summary Judgment.

10 Next, the Telekenex Defendants argue that Plaintiff cannot meet the third element of a  
11 CPA claim, a “public interest” showing. The Telekenex Defendants’ argument is premature on  
12 summary judgment. “Whether the public has an interest is therefore an issue to be determined by  
13 the trier of fact. The factors to be considered will depend upon the context in which the alleged  
14 acts were committed.” *Stephens v. Omni Ins. Co.*, 138 Wn. App. 151, 159 P.3d 10 (2007).

15 The Telekenex Defendants are also wrong as their deception and confusion of customers  
16 more than satisfies the “public interest” test as applied to private litigation. *See Hangman Ridge*,  
17 105 Wn.2d at 790 (“(1) Were the alleged acts committed in the course of defendant’s business? (2)  
18 Did defendant advertise to the public in general? (3) Did defendant actively solicit this particular  
19 plaintiff, indicating potential solicitation of others? (4) Did plaintiff and defendant occupy unequal  
20 bargaining positions?”). In *Nordstrom*, for example, the Court held that trademark infringement  
21 impacts the public interest because a necessary element of trademark infringement is confusion of  
22 the public. 107 Wn.2d at 743 (“This confusion of the public, absent some unusual or unforeseen  
23 circumstances, will be sufficient to meet the public interest requirement of the Consumer  
24 Protection Act.”). The same is true with false descriptions that are actionable under the Lanham  
25 Act, which punishes misrepresentations that mislead consumers in commerce. 15 U.S.C. §  
26 1125(a)(1)(B). “Courts considering CPA claims must take guidance from ‘final decisions of the

1 federal courts ... interpreting the various federal statutes dealing with the same or similar matters.’  
2 RCW § 19.86.920.” *CertainTeed Corp. v. Seattle Roof Brokers*, No. C09-563RAJ, 2010 WL  
3 2640083, \*6 (W.D. Wash. June 28, 2010) (letters to potential customer homeowners satisfied  
4 “public interest” requirement of CPA); *Lahoti v. Vericheck, Inc.*, 708 F. Supp. 2d 1150, 1168  
5 (W.D. Wash. 2010) (potential for consumer confusion sufficient to meet test).

6 The Telekenex Defendants’ misconduct meets the “public interest” requirement because it  
7 caused harm to Straitshot customers, not merely Straitshot itself. Injury to Straitshot customers  
8 was an inherent part of the Defendants’ fraudulent scheme. Customers such as US Bearings and  
9 RAM International have testified that the service that they received from Telekenex was poor.  
10 (Goldman Decl., Ex. 12 at 23:16-23, 25:17-25 (not satisfied with Telekenex); *id.*, Ex. 13 at 48:12-  
11 14 (Straitshot service was “[p]erfect. We had better service from Straitshot. Telekenex was a  
12 horror show for the first six months with us.”).) Further, Defendants’ pressured Straitshot  
13 customers into signing contracts with Telekenex when no justifiable reason existed to do so, and  
14 without affording customers the opportunity to consider other options by representing that  
15 Telekenex was their sole alternative to risking a major interruption of their phone, data, and  
16 Internet services. (*Id.*, Ex. 13 at 25:23-26:16, 43:12-44:17.) A former Telekenex salesman  
17 testified that it was “like shooting fish in a barrel” – “sign or we turn you off.” (*Id.*, Ex. 9 at  
18 24:16-21.) Customers such as US Bearings were forced into longer-term contracts with Telekenex  
19 than they wanted. (*Id.*, Ex. 13 at 54:6-17, 59:2-8.)

20 Further, the Telekenex Defendants engaged in similar schemes against others besides  
21 Straitshot, looking for other opportunities to force businesses to become Telekenex customers  
22 under duress. See *Sign-O-Lite Signs, Inc. v. DeLaurenti Florists, Inc.*, 64 Wn. App. 553, 562-63,  
23 825 P.2d 714 (1992) (“potential solicitation of others” is factor in finding public interest test met).  
24 For example, in March 2009, former Straitshot employee Tom Hunsinger, then an employee of  
25 AuBeta Network Corporation (“AuBeta”), advised Telekenex and Prudell that “there was another  
26 Straitshot going on” at AuBeta which, like Straitshot, was a managed services provider in

1 Washington State. (Goldman Decl., Ex. 21.) Telekenex IXC, Inc. acquired AuBeta, (*id.*), and  
 2 thereafter unlawfully threatened to cut off AuBeta customers such as Charlotte Russe, Inc., unless  
 3 they signed long-term extensions with the new Telekenex entity. On November 15, 2010, the  
 4 Washington Court of Appeals held that Charlotte had stated a valid economic duress claim.<sup>11</sup>

5 **D. Material Issues of Fact Exist with Respect to Plaintiff's Claim that the Telekenex**  
 6 **Defendants Unlawfully Solicited the Straitshot Engineers.**

7 The Telekenex Defendants argue that Plaintiff cannot provide any evidence that they  
 8 unlawfully solicited Straitshot's engineers, asserting that Plaintiff's claim rests solely on "Mr.  
 9 Gold's assumptions and/or speculation." (ECF 150 at 16:8-9.) But there is ample evidence that  
 10 the Telekenex Defendants, as well as Prudell and Radford, unlawfully solicited the engineers in  
 11 breach of the Straitshot employment contracts with Prudell and Radford and that their hiring  
 12 purportedly through a Craigslist ad was a fraud. (*See supra* § I.B.)

13 The Telekenex Defendants also argue that Plaintiff cannot establish a tortious interference  
 14 claim on the basis that they unlawfully solicited Straitshot engineers, who were at-will employees.  
 15 (ECF 150 at 16:17-18.) But the Telekenex Defendants attack a straw man, as the TAC does not  
 16 allege a tortious interference claim against the Telekenex Defendants for interfering with  
 17 Straitshot's economic relationship with its engineers.<sup>12</sup> In any event, the Telekenex Defendants'

18 <sup>11</sup> *Telekenex IXC, Inc. v. Charlotte Russe, Inc.*, No. 64192-1-I, 2010 WL 4612939, \*3 (Wash. Ct. App. Nov. 15,  
 19 2010) ("Charlotte has presented evidence that IXC threatened to allow its service to be cut-off without the notice  
 20 required in the [agreement] in order to compel Charlotte to enter into a new contract. Charlotte was first notified of a  
 21 potential disruption of service on March 25, 2009. Two days later Chaney and Hunsinger communicated to  
 22 [Charlotte's vice president of technology] that Charlotte's service would be disrupted unless it agreed to enter into a  
 23 multi-year extension of its contract. In an email from Hunsinger to both Chaney and [the vice president], Hunsinger  
 24 thanked [the vice president] for his summary of the circumstances that 'Telekenex has made it clear that service will  
 25 be disconnected to nearly 200 of our stores if we do not sign a 36-month contract today.' At that time, Charlotte's  
 26 [agreement] with AuBeta required 60 days written notice before either party could cancel the contract. The five day  
 notice given by IXC was a violation of the [agreement]. The threatened termination of services would have left 185  
 Charlotte stores not able to connect to the Internet, connect to the company data center, use the telephone, process  
 customer purchases, track inventory, keep employee timecards, or access company e-mail. Aside from lost revenue  
 from customer purchases, Charlotte's goodwill and business reputation likely would have suffered as a result of the  
 disconnection of service. This was sufficient to demonstrate a serious business loss. In order to avoid these serious  
 losses, Charlotte was forced to make a decision to its detriment by entering into a two-year contract extension with  
 IXC."). *See also* Goldman Decl., Ex. 18.

<sup>12</sup> The complaint does allege breach of contract and breach of duty claims against Prudell and Radford on the ground  
 that they violated non-solicitation clauses in their Straitshot contracts, that Telekenex intentionally interfered with

1 legal argument has no merit, as recovery for such interference *is* available as a matter of law. *See*  
 2 *Pleas v. City of Seattle*, 112 Wn.2d 794, 803-04, 801 774 P.2d 1158 (1989) (recognizing “cause of  
 3 action for tortious interference from either the defendant's pursuit of an improper objective of  
 4 harming the plaintiff or the use of wrongful means that in fact cause injury to plaintiff's  
 5 contractual or business relationships”) (citing Annot., *Liability For Interference With At Will*  
 6 *Business Relationship*, 5 A.L.R.4th 9, 65 (1981)); *Commodore v. University Mech. Contractors,*  
 7 *Inc.*, 120 Wn.2d 120, 138, 839 P.2d 314 (1992) (“Washington, too, does not require the existence  
 8 of an enforceable contract or the breach of one to support an action for tortious interference with a  
 9 business relationship.”); *Apollo, Inc. v. Parsons Infrastructure & Technology Group, Inc.*, No.  
 10 CV-03-5095-RHW, 2005 WL 1405029, \*8 (E.D. Wash. June 15, 2005) (“The existence of an  
 11 enforceable contract or the breach of one is not required to support an action for tortious  
 12 interference with a business relationship.”).<sup>13</sup>

### 13 III. CONCLUSION

14 For each of these reasons, the Telekenex Defendants’ Motion for Partial Summary  
 15 Judgment should be denied.

16 DATED this 13th day of December, 2010.

17 Respectfully submitted,

18 SUMMIT LAW GROUP PLLC

19 By /s/Jessica L. Goldman

20 Jessica L. Goldman, WSBA #21856

---

23 Straitshot’s contractual relationships with Prudell and Radford by inducing or causing a breach of these contractual  
 24 relationships, and that that all Defendants intentionally interfered with Straitshot’s contractual relationships with its  
 customers. (ECF ¶¶ 255, 265.)

25 <sup>13</sup> *See also Reeves v. Hanlon*, 33 Cal. 4<sup>th</sup> 1140, 1152 (Cal. 2004) (permitting recovery of damages for intentional  
 26 interference with an at-will employment relation under standard applicable for intentional interference with  
 prospective economic advantage); Restatement (Second) of Torts § 768 (interference with at-will contract with non-  
 compete provision actionable as interference with prospective economic advantage).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

SUMMIT LAW GROUP, PLLC  
315 5<sup>th</sup> Avenue S, Suite 1000  
Seattle, WA 98104.2682  
Phone: 206.676.7000  
Fax: 206.676.7001  
*jessicag@summitlaw.com*

Leonard A. Gail  
(Admitted *Pro Hac Vice*)  
MASSEY & GAIL LLP  
50 East Washington Street, Suite 400  
Chicago, IL 60602  
Phone: 312.283.1590  
Fax: 312.379.0467  
*lgail@masseygail.com*

***Attorneys for Plaintiff***

**CERTIFICATE OF SERVICE**

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Leigh Ann Collings Tift  
LITTLER MENDELSON, P.C.  
One Union Square  
600 University Street, Suite 3200  
Seattle, WA 98101-3122  
ltift@littler.com

A. Chad Allred  
ELLIS LI & MCKINSTRY  
Market Place Tower  
2025 First Avenue, Penthouse A  
Seattle, WA 98121  
callred@elmlaw.com

Kenneth J. Diamond  
WINTERBAUER & DIAMOND PLLC  
1200 Fifth Avenue, Suite 1700  
Seattle, WA 98101  
ken@winterbauerdiamond.com

DATED this 13th day of December, 2010.

/s/ Cheryl A. McCrum  
Cheryl A. McCrum  
Legal Assistant  
SUMMIT LAW GROUP, PLLC  
315 5<sup>th</sup> Avenue S, Suite 1000  
Seattle, WA 98104-.2682  
Phone: 206.676.7000  
Fax: 206.676.7001  
[cherylm@summitlaw.com](mailto:cherylm@summitlaw.com)